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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 333

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK AND LOCKHEED AIRCRAFT CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 1, 1948.

CERTIORARI GRANTED NOVEMBER 22, 1948.

No. 11750

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Appellant,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK and LOCKHEED AIRCRAFT CORPORATION, a corporation,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TU. 5206.

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IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Appellant,

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[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the Southern District of California

Central Division

No. 6028-B Civil

JAMES E. CAMPBELL, MITCHELL B. JOPLIN, and MALCOLM E. KIRK,

Petitioners,

vs.

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondent.

PETITION FOR ENFORCEMENT OF VETERANS' REEMPLOYMENT RIGHTS

The petitioners above named respectfully represent:

I.

This petition is filed under the provisions of Section 8(e) of the Selective Training and Service Act of 1940, as amended (50 U. S. C. A. App., Sec. 308(e)), and Section 7 of the Service Extension Act of 1941, as amended (50 U. S. C. A. App. Sec. 357); and jurisdiction of the Court is based thereon.

II.

Respondent is a corporation engaged in manufacturing airplanes at a factory which respondent maintains, and wherein respondent employs divers persons, located at Burbank, California, within the jurisdiction of this Court. Respondent has been so engaged throughout the period covered by this petition.

III.

The petitioners are honorably discharged veterans of the [2] United States Army, who hold positions as grade "A" field and service mechanics in the employ of the respondent in the operation of said factory. Each petitioner left a position, other than a temporary position, as a field and service mechanic in the employ of the respondent in the operation of said factory, during 1944-1945, and before June 4, 1945, in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. Pursuant thereto, each petitioner was inducted into the United States Army and thereafter served therein until he satisfactorily completed his period of training and service, and was honorably discharged therefrom, on a day subsequent to June 4, 1945, and received a certificate of such satisfactory completion, pursuant to law. While still qualified to perform the duties of his former position, each petitioner applied to the respondent for reemployment within 90 days after his discharge from the United States Army, and each was reemployed and restored to his position as field and service mechanic in the respondent's employ at said factory. The respective hourly rate of pay of each of the petitioners is as follows: James L. Campbell, $1.50; Mitchell B. Joplin, $1.73; and Malcolm E. Kirk, $1.60.

IV.

Although the petitioners were reemployed and restored to their former positions as aforesaid, each was restored with a loss of seniority, as shown below, and said loss in seniority has resulted in a financial loss to each petitioner.

V.

At the time of the induction of each petitioner into military service, there was in effect between the respondent and its employees, represented by Aeronautical Industrial Lodge #727 of the International Association of Machinists affiliated with the American Federation of Labor, a collective bargaining agreement regulating the wages, hours and working conditions in said factory. [3] Said agreement is dated September 15, 1941, and was effective on that date for the future period of the unlimited national emergency proclaimed by the President of the United States. Said agreement provided in Article III thereof that the seniority of each employee should date from the time of his employment, and that lay-offs should be made as follows:

> "In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, training, ability, skill and efficiency, and (b) deportment, record and other factors. If it becomes necessary to reduce the working force in any plant or department, a plan of layoff procedure will be prepared by the management and submitted to the Union for approval. If such plan is not acceptable to the Union the Company agrees to enter negotiations with the Union and to attempt to arrive at a mutually agreeable plan. If, however, at the end of one working week from the date the Company submitted its original plan of layoff procedure to the Union no new plan has been mutually agreed to, the Company may proceed according to its proposed plan of layoff subject to Article II, Section 6."

Said Article II, Section 6, prescribes a permissible grievance procedure.

No preferential retention, in case of layoffs, was given in said agreement to any union chairman. It was provided in the agreement that the Union should designate in the departments of the plant a department chairman for "approximately every 35 to 50 employees"; and also a senior chairman for each department, or for every 9 department chairmen, or fraction thereof, on each shift of work; and that there would be one union chairman elected for a one-year term. The agreement further provided that upon induction into military service, an employee should be granted a [4] leave of absence therefor, without loss of seniority rights and be reemployed "in preference to all other persons in their occupations with less seniority." A copy of said agreement is attached hereto, marked Exhibit "A" and is incorporated herein. Reference is made to the following sections of said 1941 agreement as the basis of the above statement of the provisions thereof, to wit: Article I, Section 3; Article II, Section 4; Article III, Sections 1, and 5; Article IV, Section 5.

VI.

During the petitioners' absence in military service, and on June 4, 1945, a new and different collective bargaining agreement was entered between respondent and said Lodge #727 I. A. M., in which it was provided that there should be designated by the union in the departments of the plant, a group chairman for approximately every 35 to 50 employees; and a senior chairman for each department, or for every 9 group chairmen, or fraction thereof, on each shift. The agreement provided that seniority should be "the relative status of employees in respect of length of

service with the company"; and that general layoffs should be made as follows:

"(A)—General Layoff Procedure. Layoffs shall be made in order of Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority, the Company may, in its discretion, retain them in order of their Company-wide seniority, regardless of occupation, where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination in the exercise of such discretion may be taken up as a grievance. Employees who have not acquired seniority rights may be laid off without regard to relative length of service.

"The word 'occupation' as used herein, includes all grades and leadmen within an occupation." [5]

This 1945 agreement provided, however, for preferential retention of the above mentioned group, and senior union chairmen in the event of a general layoff, as follows:

"Section 3—Layoffs (D) Top Seniority for Union Chairmen for Purpose of Layoffs: For the purpose of applying the Temporary and General Layoff Procedures, Union Chairmen who have acquired seniority shall be deemed to have top seniority so long as they remain Chairmen. If the application of the General Layoff Procedure will result in the retention of more of such Chairmen in a group or department than are provided for in Article II, Section 2 of this Agreement, the Company shall prepare and furnish to the Union a list of all Chairmen in the locations where

the surplus exists. The Union shall upon request of the Company promptly designate the Chairmen who are to remain in that capacity, and the Chairmen not to be retained as Chairmen shall be governed by the seniority rules applicable to the layoff of other employees. During a Temporary Layoff and during the period between the first and second steps in an Emergency Reduction of the Working Force, the terms of office of laid-off Union Chairmen shall be deemed to continue."

The agreement provided for reemployment of veterans of the armed forces, as follows:

"Section 6—Employees Entering Armed Forces: Employees (other than temporary employees) who shall have left the employment of the Company for the purpose of entering the armed forces of the United States, shall be re-employed by the Company in accordance with the provisions of the Selective Training and Service Act of 1940, as such Act may be amended." [6]

A copy of said agreement of June 4, 1945 is hereto attached as Exhibit "B" and incorporated herein by this reference. Reference is made to the following sections thereof as the basis for the provisions outlined above: Article II, Section 2; Article IV, Sections 1, 3, 4 and 6.

VII.

The agreement dated September 15, 1941 remained effective until the agreement of June 4, 1945, was signed, and thereafter the latter has remained in effect to this date.

VIII.

In the latter part of June, 1946, and within one year after the reemployment of each of the petitioners, the respondent made a general layoff of certain field and service mechanics, grade "A" whose employment was covered by the above mentioned agreements, and in the course thereof, each of the petitioners was laid off, but the respondent retained in its active employ numerous workmen in their occupation, including Union chairmen, i. e. group and senior chairmen, with less seniority than petitioners.

At the time of such general layoff, there were many more group and senior chairmen in the petitioners' occupational group than the number provided for in Article II, Section 2 of the Agreement dated June 4, 1945, to wit, one group chairman for every 35 to 50 employees and one senior chairman for each department, or for each 9 chairmen, yet the respondent did not call for or require a designation of a smaller number of such chairmen to be made by the Union, as provided for in Article IV, Section 3(D) of the agreement, which is set out in full above, as petitioners are informed, believe and state.

IX.

Petitioners Campbell and Kirk were laid off June 21, 1946 and Petitioner Joplin was laid off on June 24, 1946, in the course of such general layoff, but the respondent retained in its active [7] employ in said occupational group more than 3 group chairmen, who had less seniority, i. e., "length of service with the company," than any of the petitioners. The ability, skill and efficiency of the petitioners was substantially equal to that of any of the group or senior chairmen retained in active employment, but regardless of this, the general layoff was made on the

ole basis of Company-wide seniority, and not, on the basis of ability, skill or efficiency, as regards petitioners.

X.

Petitioners protested against their lay-off and the retention of said group and senior chairmen, with less seniority, in respondents' active employment; and the petitioners were restored to active employment, as follows: Campbell and Joplin on July 15, 1946; Kirk, July 16, 1946. By reason of said layoff, the petitioners lost in wages the following amounts, which they would have earned in the respondent's employ had not said junior group and senior chairmen been retained as aforesaid under the super-seniority provisions of Article IV, Section 3(D), of the 1945 agreement. Petitioners are advised and represent that their said loss in wages was due to the unlawful action of respondent in failing to accord the petitioners their full seniority, without any loss therein under the super-seniority provisions; and that they are entitled to compensation therefor.

XI.

Data concerning the re-employment of each of the petitioners, is as follows:

James L. Campbell: Was originally hired, and has a companywide seniority date of August 17, 1942; terminated to enter the Army February 26, 1944; was honorably discharged October 28, 1945; applied for reemployment November 15, 1945; was reemployed as a field and

service mechanic "A" November 27, 1945; was laid off June 21, 1946 as aforesaid, and rehired or called back to work July 15, 1946; hourly rate of pay, $1.50; total loss in wages due to layoff, $168.00. [8]

Mitchell B. Joplin: Originally hired, and has a companywide seniority date of April 19, 1943; terminated to enter the Army May 28, 1945, which he did on June 4, 1945; honorably discharged, November 23, 1945; applied for reemployment December 5, 1945, and was reemployed as field and service mechanic "A" December 10, 1945; was laid off June 24, 1946; hourly rate of pay, $1.73; total loss in wages due to lay-off, $124.56.

Malcolm E. Kirk: Originally hired, and has a companywide seniority date of August 5, 1942; terminated to enter the Army May 31, 1944, which he did June 2, 1944; honorably discharged January 12, 1946; applied for reemployment February 8, 1946, and was rehired as field and service mechanic "A" March 7, 1946; was laid off June 21, 1946, as aforesaid, and rehired or called back to work July 16, 1946; hourly rate of pay, $1.60; total loss in wages due to lay-off, $190.00.

Wherefore, Petitioners Pray:

1. That the petitioners have and recover of the respondent as and for their loss of wages suffered by reason of respondent's unlawful action in failing and refusing to reemploy them without loss of seniority, and in laying them off while retaining in active employment group and senior chairmen with less company-wide seniority than they, the following sums: James Campbell, $168.00; Mitchell B. Joplin, $124.56; Malcolm E. Kirk, $190.00.

2. That petitioners have all such other further and different relief as they may be entitled to in the premises, and that they have general relief.

JAMES M. CARTER
United States Attorney
RONALD WALKER
Assistant U. S. Attorney
Chief of Civil Division
By James C. R. McCall, Jr.
Assistant U. S. Attorney
Attorneys for Petitioners. [9]

[Verifications.] [10-11-12]

EXHIBIT "A"

AGREEMENT

between

Lockheed Aircraft Corporation

and

Vega Aircraft Corporation

and the

Aeronautical Industrial District Lodge 727

of the

International Association of Machinists
Affiliated with American Federal of Labor

Effective Date September 15, 1941

This agreement constitutes a part of the regulations of the Lockheed Aircraft Corporation and the Vega Aircraft Corporation. Each employee should become familiar with the provisions herein and retain this copy for reference. [13]

* * * * * * * * *

PREAMBLE

This Agreement entered into by and between Lockheed Aircraft Corporation, a California Corporation, and Vega Airplane Company, a California Corporation, both hereinafter called "the Company," and Aeronautical Lodge 727 of Burbank of the International Association of Machinists, hereinafter called "the Union," a non-profit association affiliated with the American Federation of Labor, evidences the desire of the parties hereto promote and maintain harmonious relations between the Company and its employees, and the willingness of the Company to deal with them through the Union as their representative. [18]

ARTICLE I.

GENERAL CONDITIONS OF CONTRACT

Section 1—Sole Agreement

This Agreement, when accepted by the parties hereto, and signed by their respective agents thereunto duly authorized, shall supersede all previous agreements by and between the parties hereto, and shall constitute the sole agreement between them.

Section 2—Exclusive Representation

For the period of this Agreement, the Company recognizes and accepts the Union as the sole agency for the

purpose of representing all employees of the Company (except officers of the Company appointed by its Board of Directors, and except monthly salaried executive, administrative and professional employees, and all outside salesmen and representatives, as defined by the Wage and Hour Division of the United States Department of Labor, and except guards and firemen and except supervisory personnel who devote all of their time to supervision) in negotiations pertaining to hours, wages and conditions incident to their employment by the Company.

At the time of employment, each employee shall be given a copy of this Agreement and a letter which shall read as follows:

> We are handing to you herewith a copy of the latest Agreement between Lockheed Aircraft Corporation and Vega Airplane Company and Aeronautical Lodge 727 of the International Association of Machinists, affiliated with the American Federation of Labor, arrived at as the result of negotiations between the management of the two Companies and representatives of the Union. [19]
>
> In order that there may be no misunderstanding, the management affirms its sincere belief in the principles of collective bargaining, between management representatives and duly elected representatives of employees, who are members of the Union, and this Agreement enumerates the benefits pertaining to wages, hours and working conditions which the employees now enjoy as a result of that method of dealing.

Since March 12, 1937, Aeronautical Lodge 727, International Association of Machinists, has been

sole representative of Lockheed and Vega employees on matters pertaining to wages, hours and conditions incident to their employment. Your management affirms that the joint relationship with this Union has been continuous and harmonious.

The management does not wish to suggest that membership in the Union is necessary to secured and continuous employment but appreciates the advantage of knowing that the voice of the Union is in effect the voice of all its weekly salaried employees covered by this Agreement. It is our desire that all employees give due consideration to membership in the Union.

Section 3—Period of Agreement

This Agreement shall become effective upon its signature and shall remain in force until July 1, 1943, or for the period of the Unlimited National Emergency proclaimed by the President of the United States, whichever is longer, and thereafter until thirty (30) days after either party hereto shall give to the other written notice of desire for change or termination. During such thirty-day period, conferences shall be held by and between the parties hereto with a view to arriving at further agreement. Notices permitted or required to be served under the terms of this Agreement shall be sufficiently served for all purposes herein when mailed postage prepaid, registered mail, return receipt requested, to Robert E. Gross, or his successor, Lockheed Aircraft Corporation, Burbank, California, and/or Courtlandt S. Gross, or his successor, Vega Aircraft Company, Burbank, Califor- [20] nia, for service upon the Company, and when similarly mailed to Dale O. Reed, President of the Union, at 147 North

Palm Avenue, Burbank, California, or to the successor of him if and when information has been supplied to the Company of the name and address of such successor, and the date of such notice shall be the controlling date for all purposes hereunder.

Section 4—Amendments Permitted

This Agreement may be amended or added to at any time by the written consent of both parties hereto. However, after one year from date of the signing of this Agreement, either party may, after fifteen (15) days' written notice, open negotiations only on items directly affecting wage rates and other financial benefits for employees. However, if the national emergency shall have extended beyond July 1, 1943, either party may, at that time, after fifteen (15) days' written notice, terminate the Agreement or negotiate amendments on any item of the Agreement. This Agreement shall remain in full force and effect during negotiations on amendments.

Section 5—Performance Required

Either party hereto shall be entitled to require specific performance of the provisions of this Agreement. Any violation of the provisions of this Agreement on the part of any Company employee in a full-time supervisory capacity shall be considered as a violation of this Agreement on the part of the Company. Any violation of the provisions of this Agreement on the part of Union Chairmen and/or representatives shall be considered a violation of this Agreement on the part of the Union. Time is of the essence of this Agreement.

The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent for any further waiver of such breach or condition.

Section 6—Agreement Not Assignable

This Agreement is not assignable. In the event of change of management, or geographical location of [21] plants, or sale of the Company the present management shall do everything in its power to insure the continuation of this Agreement during its prescribed period.

Section 7—Right to Manage Plant

The Company has and will retain the right and power to manage the plant and direct the working forces, including the right to hire, suspend, discharge, promote, demote, or transfer its employees for just cause, subject to the terms of this Agrement and the grievance procedure established herein.

Section 8—Apprenticeship Agreement

An apprenticeship agreement shall be a part of this Agreement.

ARTICLE II—UNION-COMPANY RELATIONS

Section 1—Strikes and Lockouts

The Union is opposed to strikes. A strike shall be called only after all conciliation, mediation and other methods and procedures provided herein, by Federal law or by Federal Government agencies, executive orders and proclamations and rules and regulations of governmental administrative bodies, shall have failed to adjust controversies or grievances. Should a strike vote then be called, the Company shall be notified in writing by the President of the Union of the action taken, and under no circumstances shall a strike be effected until expiration of fifteen days after date of such written notice.

No such strikes shall be called for any purposes other than for the adjustment of a controversy or grievance directly affecting the Company and the Union. In the event of an effective strike, the Union and its members shall peaceably withdraw from the property of the Company. [22]

Neither the Union nor any of its members shall participate in or encourage any sit-down or slow-down strikes in or upon the Company's property. Neither the Union nor any of its members shall participate in or encourage against the Company any strike, sit-down, slow-down, or suspension of work effected by others than the Union and its members and those employees who have expressed a desire to be represented by the Union.

The Company is opposed to "lock-outs" and shall cause one only after all possible means to adjust grievances have failed and only after a fifteen-day written notice, but the Company reserves the right to close its plant should it become necessary to protect its property and employees from violence.

Section 2—Labor Relations Committee

A Labor Relations Committee is hereby established, which shall consist of representatives of the Union and the Company. The representatives of the Union shall consist of a Board of five elected members of the Negotiating Board of the Union and the President and another official of the Union. The representatives for the Company shall consist of a like number to be chosen in such a manner as the Company may desire. The Labor Relations Committee may discuss and negotiate all matters pertaining to wages, hours, and working conditions, and shall review and settle all disputes and grievances which may arise

between the Company and the Union and/or Company employees. Individual grievances or items affecting a single department must conform to Section 6 of this Article before being presented to the Labor Relations Committee, but items of a company-wide nature may be presented directly. This Committee may establish subcommittees on a permanent or temporary basis.

A meeting of this Committee may be called by the Union or the Company upon three (3) regular working days' notification.

The decision of the Labor Relations Committee shall be considered as final if a majority of the Union representatives and a majority of the Company representatives concur. If a decision cannot be reached the aid of the Conciliation Service of the U. S. Department of Labor shall be requested. [23]

Section 3—Labor Relations Sub-Committee

There shall be established one Labor Relations Sub-Committee for Lockheed and one Labor Relations Sub-Committee for Vega. Each sub-committee shall consist of three members of the Union and three representatives of management. Each committee shall meet once each week and will handle all grievances which have proceeded through the regular channels as outlined in Section 6 of this Agreement, without a satisfactory settlement having been made, but shall deal only with those grievances which have been before the Industrial Relations office of the Company three (3) regular working days prior to the time of the meeting. Special meetings of these committees may be called. Any meeting may be cancelled or postponed with the mutual consent of the President of

the Union and the Industrial Relations office of the Company.

Section 4—Union Department Chairmen

As designated by the Union there shall be in the departments of the plant a department chairman for approximately every 35 to 50 employees and a senior chairman for each department or for every 9 department chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for a Union Chairman to serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company.

Section 5—Department Representation

It is the desire of the Union and the Company that each department operate in complete agreement between the Union and supervision. Differences arising out of employment shall, wherever possible, be concluded within the department by the cooperation of the Union chairmen, the supervisory staff, and the personnel represen- [24] tatives. In order to accomplish this cooperative action, foremen shall set aside a portion of one day per week to discuss with the senior chairmen any problems arising during the week. At this time, any differences regarding rates of pay, hours, or working conditions, or the provisions of this Agreement, shall be discussed. The employee should first present his differences to the department head, assistant foreman, or sub-foreman (where exists). However, the employee has the privilege of presenting his dif-

ference in written form to the Chairman to be taken up by the Senior Chairman at the time of his regular weekly meeting with the foreman. However, if extremely urgent, any differences may be presented by the Senior Chairman to the foreman upon its receipt.

Section 6—Method of Handling Grievances

Should any difference arise within any department of the Company which cannot be settled according to Section 5 of this Agreement within one week, the matter becomes a grievance and earnest effort shall be made to settle the grievance in the following manner:

Step 1. The written grievance shall be presented by a Business Representative of the Union to the Industrial Relations office. The Industrial Relations office shall investigate the grievance and may confer with the parties and department involved with a view to arriving at a mutually satisfactory agreement.

Step 2. If through this latter method a mutually satisfactory agreement is not reached, the case may be presented to the Labor Relations Sub-Committee of that Company at its next regular meeting.

Step 3. Then, if a mutually satisfactory settlement is not reached within one week, the grievance or problem shall be presented in writing to the Labor Relations Committee, together with the findings of the former reviews.

Section 7—Business Representatives and Union Officials

The Business Representatives of the Union shall have access to the Company's plants or to the departments of [25] the Company's plants to which they are assigned, for the purpose of contacting Department Chairmen. Such visits shall be subject to such regulations as may be made

from time to time by the Company, the U. S. Army, and the U. S. Navy. The Company shall not impose regulations which will exclude the Business Representatives from the plants nor render ineffective the intent of this provision.

No full-time Union official or Business Representative shall discuss any problem with employees (other than Chairmen) or with the supervision of any department, except as provided in Article II, Section 6, of the Agreement.

Section 8—Cooperation

The Union and its members agree to report to the Company any acts of sabotage, subversive activities, theft, damage to or taking of any employee's, Company's and/or Government's property or work in process or materials or any known threat of sabotage, subversive activities, or damage to or taking of such property, and the Union further agrees if any such acts occur to use its best efforts in assisting the Company and the Government to determine and apprehend the guilty party or parties.

Section 9—Posting Notices

Places shall be provided at locations agreed upon for the posting of the rules and regulations of the Union as well as notices of interest after submission to the Industrial Relations office.

Section 10—Solicitation of Memberships

Employees and Union representatives shall not solicit union memberships or collect dues on Company property on the Company time of any employee, although such activities may be conducted by employees on Company property on the free time of the employees. [26]

Section 11—Reports

The Union, and the Company may request the following reports which are to be furnished as soon as possible:

(a) Upon the request of the Company, the Union shall certify to the Company the number of its members.

(b) Upon the request of the Union, the Company shall certify to the Union, the number of employees that are in the various occupational classifications recognized by this Agreement.

(c) Upon the request of the Union, the Company shall furnish the Union with lists of employees in their respective departments, showing rates, classifications, and date of hiring and shifts.

(d) In hiring new employees, the Company agrees to use its best efforts to notify the Union Chairman, in whose group the employees are placed, the name of such employees, their wage rate, shift, and classification within twenty-four (24) hours of the commencement of their employment.

ARTICLE III—EMPLOYMENT CONDITIONS

Section 1—Hiring Date

Six months after an employee is hired his seniority shall be retroactive to the date of his hiring. Rehiring is governed by the sections following.

Section 2—Advancements

In a case of an opening in a higher grade of a classification, the employees with the most seniority in the lower grades in the same branch of the department shall have preference over all others for the advancement.

When there are no competent employees available in this branch of the department, or when no employee in the group can satisfactorily perform the advanced job, [27] employees will be taken from other branches of the same department before hiring new employees or transferring employees from other departments.

In case of an opening for a leadman or group head, the department head involved will, before making the appointment, submit his selection to the Industrial Relations office for approval. With this selection, the department head will submit the names of at least two other employees who are to be considered for the opening, with a written explanation as to the reasons for his selection.

Section 3—Transfers

Transfers to higher rated jobs in other departments shall be governed by the same principles as those pertaining to advancement. Full consideration shall be given to employees requests for transfers.

Section 4—Quits and Discharges

Any employee quitting the services of the Company or discharged from the services of the Company shall forfeit all seniority. If he is rehired later, the date of rehire shall govern. A five-day period of unreported absence without a reasonable explanation shall be considered a quit.

Section 5—Layoffs

In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, training, ability, skill and efficiency, and (b) deportment

record and other factors. If it becomes necessary to reduce the working force in any plant or department, a plan of layoff procedure will be prepared by the management and submitted to the Union for approval. If such plan is not acceptable to the Union the Company agrees to enter negotiations with the Union and to attempt to arrive at a mutually agreeable plan. If, however, at the end of one working week from the date the Company submitted its original plan of layoff procedure to the Union no new plan has been mutually agreed to, the Company may proceed according to its proposed plan of layoff subject to Article II, Section 6.-[28]

To enable the Union to determine that the principle of seniority and the procedure are adhered to, the Company will provide the Union prior to a layoff with a list of all employees it intends to release.

Any employee who has been off the payroll of the Company because of a layoff for a period of sixty (60) days shall lose all former seniority unless he registers in person or by mail at the Industrial Relations office every two weeks, after the expiration of sixty (60) days, in order to preserve his seniority. Upon being rehired, if the above rules have been complied with, the original hiring date shall govern.

Section 6—Sanitary, Safety and Health Conditions

The Company agrees to maintain sanitary, safe and healthful conditions in all its plants and working establishments in accordance with the laws of the State, County and City of its place of operation. Proper and modern safety devices shall be provided for all employees working on hazardous or unsanitary work, such devices

(except articles of clothing) to be furnished by the Company. No employee shall be discharged for refusing to work on a job not made reasonably safe or sanitary for him, or that might unduly endanger his health.

All recommendations and grievances concerning sanitation, safety, health and other working condition factors will be presented through the same procedure as outlined in Article II.

One member of each of the Company's General safety and Sanitation Committees shall be elected by the Union.

Section 7—Hiring Age

The Company agrees that there shall be no established maximum age limit in the hiring of employees.

Section 8—Employment Not Jeopardized

Union membership or legitimate Union activity will not jeopardize an employee's standing with the Company or opportunity for advancement. [29]

ARTICLE IV—EMPLOYEE PRIVILEGES

Section 1—Vacations

(a) Employees who have completed one year's continuous service from the date of hiring, or rehiring, shall be eligible for a vacation with pay, such vacation to be one working week, for which the pay shall be five days at the base rate.

(b) Employees who have completed five years' continuous service from the date of hiring, or rehiring, shall be eligible for an additional week's vacation for which the pay shall be five days at the base rate.

(c) This vacation must be taken within ten months of the date of eligibility or be forfeited.

(d) An employee who is laid off will be granted any vacation for which he is eligible at the time he is laid off.

(e) Vacation time preference shall be given to employees with the greatest seniority.

(f) This section shall become operative at the conclusion of the present vacation season, February 28, 1942.

Section 2—Holidays

The Company recognizes the following six (6) legal holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; and Christmas Day.

Full pay (eight (8) hours at straight time) shall be paid to all employees whenever one of these holidays falls on Monday through Friday or on Saturday if the work schedule of the majority of employees includes Saturdays. In addition, straight time shall be paid for hours worked on holidays up to eight (8) hours, thereafter two times the regular rate shall be paid.

No pay under this provision shall be granted an employee during his vacation or leave without pay.

Should a recognized holiday fall upon a Sunday, the Monday immediatly following shall be observed as the holiday. [30]

Section 3—Leaves Without Pay

Leaves of absence without pay may be granted employees for a period not to exceed ten (10) working days during the year. For good and sufficient reason the Company may extend the period of leave. The leave of absence shall not in any way jeopardize the employee's standing

with the Company. Upon return from leave of absence, the employee shall be reinstated without loss of seniority and at a rate no lower than the one held previous to the leave.

At such times as the Union may request, the Company will allow Union members leaves of absence without pay for Union business of Lodge 727. The leaves of absence shall in no way jeopardize the standing or rights of the members in their positions. All full-time Union officials who formerly were employees are considered as on leaves of absence, so long as they are employed by the Union.

Section 4—Sick and Injury Leave

In case of illness of the employee, or death in the immediate family, leave with pay will be allowed up to a total of five (5) days a year, no more than three (3) of which will be allowed at one time, all sick leave being subject to verification by the Company's Medical Division.

No employee shall be terminated from the company payroll because of, or on account of his illness or non-occupational injury, provided the period of disability is not longer than six (6) months, and shall be reinstated upon recovery from illness after being pronounced physically and mentally fit by the Medical Unit of the Company.

Employees must notify the Company, if possible, within twenty-four (24) hours of physical disability.

Section 5—Military Service

(a). If any employee subject to the terms of this Agreement shall enter into the United States Government military service, either voluntarily or by conscription, such employee shall be granted leave of absence covering the period

of time in which he may be thus engaged in Government service without loss of seniority rights. Upon the termination of such Government service, if within forty- [31] five (45) days such employees shall request re-employment and if the employees are physically and mentally able to do the work available, the Company agrees to re-employ such persons in preference to all other persons in their occupations with less seniority.

(b) All employees granted time off or called to duty for United States Government military training, provided such period of training does not exceed sixty (60) days, in any branch of the military training program, shall receive for a period not to exceed thirty (30) days, the difference between their base military pay and the amount of base pay that would have been earned while working on their regular positions with the Company. This amount will be paid upon return from training and upon receipt of evidence of the amount received while engaged in such training.

Section 6—Educational Facilities

The Company shall continue to cooperate with the Union's Educational Committee to make certain educational facilities available to its employees, in order that they may receive training to qualify them for work in more than one department in the plants, if they so desire.

ARTICLE V—PAY PROVISIONS

Section 1—Periodic and Special Reviews

The rate and record of each employee shall be reviewed every six months with a view to wage adjustment in accord with his proven ability, production, etc. This periodic

review is not to be construed to mean that any employee is guaranteed an increase as a result of this review.

Reviews of employees shall be administered in such a way as to allow the Union to represent the employee at the time of his review. Any review that is not satisfactorily concluded automatically goes to Step 1 of the grievance procedure.

A special review for any employee shall be made in the event of a change of work or other condition which may warrant such special review. [32]

Section 2—Overtime Pay

Hours worked in excess of eight (8) hours in any one day of an employee's work week shall be paid for at one and one-half times the regular rate of the employee.

Time worked in addition to an employee's established work-week of forty (40) hours shall be paid for at the rate of one and one-half times the regular rate of the employee.

However, for time worked on the second overtime day of an employee's established work week, or after eight (8) hours of an employee's holiday, two times the regular rate shall be paid. For example, if an employee's established work week is Monday through Friday, then his second overtime day is Sunday for which he shall be paid two times the regular rate.

Section 3—Hours and Days of Work

(a) For all employees, eight (8) hours shall constitute a standard day's work to be performed within nine (9) consecutive hours.

(b) In the factory, the standard day shift shall be from 7:00 a.m. to 3:30 p.m.; the standard night shift shall be from 4:00 p.m. to 12:30 a.m.; and the standard third shift shall be from 12:30 a.m. to 7:00 a.m.

(c) In the office and technical departments, the standard day shift shall be from 8:00 a.m. to 4:45 p.m., or 7:30 a.m. to 4:00 p.m. or 4:15 p.m., except where the nature of the work requires that factory hours be maintained.

(d) All deviations from the standard shift hours shall be cleared with the Union and mutually agreed upon.

(e) Five (5) days, Monday through Friday, shall constitute the standard work week unless or until the Company is instructed by the Federal Government to alter or change the work schedule now in effect. However, the Company reserves the right to engage, alter, or rotate maintenance, personnel service, administrative service, or employees engaged in preparing the payroll to work five (5) consecutive days other than those constituting the standard work week. It is specifically agreed that these employees will not be engaged in production work. [33]

(f) All Sunday overtime shall be voluntary on the part of the employee.

Section 4—Premium for Hours and Days of Work

(a) Night shift employees shall receive a bonus of six (6) cents an hour.

(b) Third shift employees shall receive eight (8) hours' pay plus a six (6) cent an hour bonus for working six and one-half (6½) hours.

(c) All employees working other than the standard work week shall receive a premium of three (3) cents an hour in addition to other bonuses.

Section 5—Payroll Deductions—Union Fees

Payroll deductions for Union fees shall be made only upon receipt by the Company of written instructions from the individual employee and shall continue until cancelled in writing.

(a) The Company, subject to the above regulations, shall deduct from the pay check issued the second Friday of each month the Union dues for that month and shall forward same to the Financial Secretary of the Union, and shall be responsible to him for all such dues collected. In the case where there are no earnings by the employee during this week, a double deduction shall be made the following month. The Company shall not, however, be responsible for nonpayment of any dues of any Union member in the absence of written instructions from the employee to make deductions from pay therefor.

(b) Cancellation of payroll deductions for Union dues shall be made in the following manner: The employee shall give notice, in writing, of his or her desire for deductions to stop, and be delivered by him or her to the business office of the Union. Such cancellation must be delivered by the first day of the month for which the cancellation becomes effective. The Union shall forward this notice to the Industrial Relations office of the Company.

(c) Union membership fees shall be deducted upon the presentation to the Company of authorization signed by the employees. [34]

Section 6—Payroll Deductions—Company Reimbursement

Payroll deductions may be made to reimburse the Company as follows:

(a) All cost of tools and equipment issued to an employee but not returned by him, such cost to be subject to wear of the tools.

(b) For each tool check lost and not returned, the sum of twenty-five (25c).

(c) For money paid by the Company to a creditor or officer of the law for an indebtedness of an employee, providing demand is made upon the Company according to law.

(d) For any indebtedness due to the Company covering purchases made by an employee through the Company.

(e) For any loans or advances made to the employee by the Company.

(f) For each employee identification card or identification badge lost or destroyed, a sum of One Dollar ($1.00).

(g) For a lost key, a sum of One Dollars ($1.00).

Section 7—Report Time

An employee called to work shall receive a minimum of four (4) hours' pay in the shift to which he is called.

Section 8—Pay Periods and Methods

Pay checks for each employee shall be issued each Friday and shall represent the earnings of the employee to and including the previous Friday.

Section 9—Lost Time

Deductions for time off, whether due to tardiness or other causes, shall not be in excess of actual time lost.

Section 10—Change in Working Schedule

In the event of instructions from the Federal Government to alter or change the working schedule now in [35] effect, the Company may upon 15 days' written notice reopen negotiations with the Union to the end of amending such section of this contract as pertain to hours of work and/or overtime pay for the sole purpose of considering the objectives desired by the Government.

ARTICLE VI—PAY RATES

Section 1—Blanket Rate Increase

Each employee on the payroll of the Company as of July 1, 1941, shall receive an increase of $4.00 on his basic weekly rate. This increase of $4.00 per week shall be retroactive to July 1, 1941.

Section 2—Starting Rates of Pay

Employees shall receive a minimum rate of $24.00 per 40-hour week, which shall be increased to $26.00 per 40-hour week at the end of a period of four (4) full weeks from the date of employment and further increased to a minimum of $28.00 per 40-hour week at the end of a period of eight (8) full weeks from the date of employment, and further increased to a minimum of $30.00 per 40-hour week at the end of a period of twelve (12) full weeks of employment. No further automatic increases are mandatory.

Upon the completion of an additional twelve (12) working weeks, at a rate of no less than $30.00 per 40-hour week, each employee shall be classified and receive the minimum rate of pay for the classification.

Should any employee fail to make the progress necessary to merit an increase during this probationary period, this fact shall be deemed sufficient ground for immediate dismissal or transfer to another occupation, at the discretion of the Company.

The minimum starting rates of pay as outlined in this section shall be effective retroactive to July 1, 1941.

Section 3—Part-Time Supervision

Under Article 1, Section 2, full-time supervisory employees are excluded from this Agreement. Part-time [36] supervisory employees (at present designated as Leadmen and Group Heads) are represented by this Agreement. Employees who are responsible for the activities of a group and who spend a portion of their time supervising and part of their time working shall be considered part-time supervisory employees. Employees working in this classification shall be paid six (6) cents an hour more than the highest paid in their group.

Section 4—Application of Rate Changes

During a period of sixty (60) days from the date of the signing of this Agreement, there shall be no rate changes or rate reviews. During this period, the new starting rates and the blanket increase provided herein will be applied to all eligible employees and pay checks covering the retroactive features of this Agreement will be prepared. At the end of this period, the review provisions outlined in Article V, Section 1, will become effective.

In applying the new starting rates and the blanket increase the Company will first apply the $4.00 blanket increase and then make any adjustments necessary to meet the requirements of the new minimum starting rates as outlined in Section 2 of this Article.

Section 5—Changes in Rate Schedule

It is recognized that changing conditions and circumstances may, from time to time, require adjustment of wage rates because of inequalities, development of new manufacturing processes, changes in the content of jobs, or mechanical improvements brought about by the Company in the interest of improved methods and product. Under such circumstances the following procedure shall apply:

(1) When a new job or position is established

The Company will develop an appropriate rate and establish the rate to cover the job or position in question. The Union shall be informed by the Company in advance concerning such rates. The rate established may be opened for negotiations upon the request of the Union.

(2) When changes are made in equipment, method of processing, material processed, or quality or production [37] standards which would result in a substantial change in job duties or requirements; or where, over a period of time, an accumulation of minor changes of this type have occurred, which, in total, have resulted in a substantial change in job duties or requirements; or where a new job or position changes the job duties of an existing job, the Company may establish new rates which may be opened for negotiation upon request of the Union.

The acceptance and agreement to all of the above terms and conditions by either or both parties hereto are conditional upon the approval of the Office of Production Management, the War Department and the Navy Department.

Signed this fifteenth day of September, 1941.

For the Union

Negotiating Committee

Dale O. Reed President Aeronautical Lodge #727, I. A. M.

Lyle J. Aewey Recording Secretary

R. Cecil Manneny Charles L. Baugh Thomas E. McNett Charles H. Jones Theo. H. Sorenson

For the Company

Robert E. Gross President Lockheed Aircraft Corporation

Cyril Chappellet Secretary Lockheed Aircraft Corporation Vega Airplane Company

R. A. Von Haker Vice-Pres. in Charge of Mfg. Lockheed Aircraft Corporation

H. E. Ryker Vice-Pres. in Charge of Mfg. Vega Airplane Company

R. Randall Irwin Industrial Relations Director Lockheed Aircraft Corporation Vega Airplane Company

Approved:

Chas. Tigar Business Representative Aeronautical District Lodge #22

Geo. C. Castleman Vice-President, International Association of Machinists [38]

SUPPLEMENTAL AGREEMENT

It is hereby agreed by each of the undersigned that the existing agreement, bearing the effective date of September 15, 1941, between Lockheed Aircraft Corporation, a California corporation, and Vega Airplane Company, a California corporation, and Aeronautical Lodge 727 of Burbank of the International Association of Machinists, a non-profit association affiliated with the American Federation of Labor, shall be supplemented and amended as follows:

1. Vega Aircraft Corporation, a California corporation, acknowledges that it is the successor in interest of Vega Airplane Company, a California corporation, and hereby agrees to accept the benefits, and to be bound by each and all of the obligations, of the above described existing agreement of September 15, 1941, and the supplements and amendments to said existing agreement herein contained, in the same manner, and to the same extent, as its predecessor, Vega Airplane Company.

2. Aeronautical Industrial District Lodge 727, of Burbank, California, of the International Association of Machinists, a non-profit association affiliated with the American Federation of Labor, acknowledges that it is the successor in interest of Aeronautical Lodge 727 of Burbank of the International Association of Machinists, a non-profit association affiliated with the American Federation of Labor, and hereby agrees to accept the benefits, and to be bound by each and all of the obligations, of the above described existing agreement of September 15, 1941, and the supplements and amendments to said existing agreement herein contained, in the same manner, and to the same extent, as its predecessor, Aeronautical Lodge 727 of Burbank.

3. Page 3 of said existing agreement of September 15, 1941, constituting the Preamble, shall be amended to read as follows:

"This agreement entered into by and between Lockheed Aircraft Corporation, a California Corporation, and Vega Aircraft Corporation, a California Corporation, both hereinafter called 'the Company,' and the Inter- [39] national Association of Machinists, Aeronautical Industrial District Lodge 727, of Burbank, California, hereinafter called 'the Union,' a non-profit association affiliated with the American Federation of Labor, evidences the desire of the parties hereto to promote and maintain harmonious relations between the Company and its employees, and the willingness of the Company to deal with them through the Union as their representative."

4. The letter to employees provided for and contained in section 2 of Article I of said existing agreement shall be amended to read as follows:

"We are handing to you herewith a copy of the latest Agreement between Lockheed Aircraft Corporation and Vega Aircraft Corporation and Aeronautical Industrial District Lodge 727, of Burbank, California, of the International Association of Machinists, affiliated with the American Federation of Labor, arrived at as the result of negotiations between the management of the two Companies and representatives of the Union.

"In order that there may be no misunderstanding, the management affirms its sincere belief in the principles of collective bargaining, between manage-

ment representatives and duly elected representatives of employees, who are members of the Union, and this Agreement enumerates the benefits pertaining to wages, hours and working conditions which the employees now enjoy as a result of that method of dealing.

"Since March 12, 1937, Aeronautical Industrial District Lodge 727, of Burbank, California, International Association of Machinists, has been sole representative of Lockheed and Vega employees on matters pertaining to wages, hours and conditions incident to their employment. Your management affirms that the joint relationship with this Union has been continuous and harmonious.

"The management does not wish to suggest that membership in the Union is necessary to secured and continuous employment but appreciates the [40] advantage of knowing that the voice of the Union is in effect the voice of all its weekly salaried employees covered by this Agreement. It is our desire that all employees give due consideration to membership in the Union."

5. The name "Aeronautical Lodge 727" appearing in the description of signatories at page 24 of said existing agreement, shall be amended to read "Aeronautical Industrial District Lodge 727, of Burbank, California."

6. The name "Vega Airplane Company" appearing in Section 3, Article 1, page 6 of said existing agreement and in the description of signatories at page 24 of said existing agreement shall be amended to read "Vega Aircraft Corporation."

7. It is further understood and agreed by each of the undersigned that wherever in said existing agreement of September 15, 1941, the term "Company" appears, said term shall include "Vega Aircraft Corporation," a California corporation, in place of "Vega Airplane Company"; and that wherever in said agreement "Vega" appears, said term shall mean and refer to "Vega Aircraft Corporation," a California corporation in place of "Vega Airplane Company"; and that wherever in said agreement the terms "Union" or "Lodge 727" or either of them appears, said terms shall mean and refer to "Aeronautical Industrial District Lodge 727, of Burbank, California" in place of "Aeronautical Lodge 727 of Burbank."

8. It is further agreed by each of the undersigned that the title "Aeronautical Lodge 727 of Burbank" appearing on the title page of said existing agreement of September 15, 1941, and on each side of the payroll deduction card inserted in said agreement immediately following the title page, and on each side of the membership application card inserted at the end of said agreement, shall be in each instance amended to read "Aeronautical Industrial District Lodge 727, of Burbank, California."

9. It is further agreed by each of the undersigned that the respective benefits contained in said existing agreement of September 15, 1941, and the supplements and [41] amendments to said existing agreement herein contained, shall accrue to, and vest in, each of the undersigned, and that other than as set forth in the sup-

plements and amendments herein contained, said existing agreement of September 15, 1941, shall be and remain in full force and effect for the period stated in Section 3 of said agreement.

Dated, this 31st day of August, 1942.

For the Union

Dale O. Reed President—Aeronautical Industrial District Lodge 727, I. A. M.

W. M. Holladay Recording Secretary

Thomas E. McNett Pat Daly Robert Potter Fred L. Moore

For the Company

Robert E. Gross President Lockheed Aircraft Corporation

Cyril Chappellet Vice-Pres. - Lockheed Aircraft Corporation Secretary - Vega Aircraft Corporation

R. A. Von Haker Vice-Pres. in Charge of Mfg. Lockheed Aircraft Corporation

H. E. Ryker Vice-Pres. in Charge of Mfg. Vega Aircraft Corporation

R. Randall Irwin Industrial Relations Director Lockheed Aircraft Corporation, Vega Aircraft Corporation

Approved:

Geo. C. Castleman Vice-President, International Association of Machinists [42]

* * * * * * * * *

EXHIBIT "B"

AGREEMENT

between

Lockheed Aircraft Corporation

and

Aeronautical Industrial District Lodge 727

and

International Association of Machinists

Effective Date June 4, 1945 [45]

* * * * * * * * *

AGREEMENT

Between

Lockheed Aircraft Corporation, and

The International Association of Machinists and Aeronautical Industrial District Lodge 727

PREAMBLE

This Agreement entered into by and between Lockheed Aircraft Corporation, a California corporation, hereinafter called "the Company," and the International Association of Machinists and Aeronautical Industrial District Lodge 727, North Hollywood, hereinafter called "the Union," a non-profit organization affiliated with the American Federation of Labor, evidences the desire of the parties hereto to promote and maintain harmonious relations between the Company and its employees, and the willingness of the Company to deal with them through the Union as their representative.

ARTICLE I

GENERAL CONDITIONS OF CONTRACT

Section 1—Sole Agreement

This Agreement, when accepted by the parties hereto, and signed by their respective agents thereunto duly authorized, shall supersede all previous agreements by and between the parties hereto, and shall constitute the sole agreement between them.

Section 2—Exclusive Representation

(A) Definition of Bargaining Unit

For the period of this Agreement, the Company recognizes and accepts the Union as the exclusive representative of all the employees of the Company, except those listed in Subsection (B), for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. At the time of employment, the Company shall give each employee a copy of this Agreement.

(B) Employees Excluded from Bargaining Unit

(1) Officers of the Company appointed by its Board of Directors; [48]

(2) Salaried executive, administrative and professional employees, as defined by the Wage and Hour Division of the United States Department of Labor;

(3) All outside salesmen and representatives, as defined by the Wage and Hour Division of the United States Department of Labor;

(4) Guards;

(5) Firemen employed in plants outside the State of California;

(6) Employees in the occupations listed below for whom the National Labor Relations Board designated another collective bargaining agent, including employees in the classification of Field Service Man who upon investigation are shown to be engineering employees temporarily assigned to field duty:

Aerodynamicist
Aerodynamics Engineer
Construction Engineer
Contract Specifications Engineer
Design Specialist
Development Liaison Engineer
Draftsman
Electrical Engineer
Engineering Assistant
Engineering Designer
Engineering Draftsman
Process Analyst
Process Engineer
Procurement Engineer
Production Design Engineer
Research Engineer
Research Laboratory Analyst
Salvage Engineer
Service Engineer
Staff Engineer
Standards Analyst
Standards Engineer
Engineering Drawings Checker
Engineering Liaison Man
Enginering Technician
Flight Test Analyst
Flight Test Engineer [49]
Loftsman
Manufacturing Engineer
Material Analyst
Mathematician
Mechanical Design Engineer
Stress Analyst
Structures Engineer
Technical Computer
Technical Writer
Time Study Man
Tool Engineer
Tool Research Analyst
Weight Analyst
Weight Control Engineer
Wind Tunnel Test Engineer

Section 3—Period of Agreement

This Agreement shall remain in full force and effect until July 1, 1946, or for a period of one year from the date of its execution, whichever is the longer, and thereafter until amended or terminated as hereinafter provided. On June 15, 1946, or at the end of such one year period, whichever is the longer, or on any date thereafter, either party may give to the other written notice of desire for modifications or amendments. In addition thereto, on or after the National War Labor Board Directive Order of March 3, 1943, as heretofore or hereafter amended shall have been terminated or shall have ceased to be effective, either party may give to the other written notice of a desire for modifications or amendments of wage rates and other financial benefits under this Agreement. Any notice given under this Section for modifications or amendments shall specify the modifications or amendments desired and the parties agree to commence negotiations for such modifications or amendments within fifteen (15) days after the giving of such notice. In the event of the failure of the parties to reach an agreement on modifications or amendments within forty-five (45) days after the giving of such written notice either party may terminate this Agreement by written notice to the other.

In the event of instructions from the Federal Government to alter or change the working schedule now in [50] effect, the Company may upon fifteen (15) days' written notice reopen negotiations with the Union to the end of amending such sections of this contract as pertain to hours of work and or overtime pay for the sole purpose of considering the objectives desired by the Government.

Nothing herein shall preclude the Union from Petitioning the National War Labor Board for modification of its Directive Order of March 3, 1943, in the event that the Little Steel Formula should be modified.

Section 4—Performance Required

Either party hereto shall be entitled to require specific performance of the provisions of this Agreement. Any violation of the provisions of this Agreement on the part of any Company employee in a full-time supervisory capacity shall be considered as a violation of this Agreement on the part of the Company. Any violation of the provisions of the Agreement on the part of Union Chairmen and/or representatives shall be considered a violation of this Agreement on the part of the Union. Time is of the essence of this Agreement.

The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent for any further waiver of such breach or condition.

Section 5—Agreement Not Assignable

This Agreement is not assignable. In the event of change of management, or geographical location of plants, or sale of the Company, the present management shall use its best efforts to insure the continuation of this Agreement during its prescribed period.

Section 6—Right to Manage Plant

The Company has and will retain the right and power to manage the plant and direct the working forces, including the right to hire, to suspend or discharge for just cause, to promote, demote and transfer its employees, subject to the provisions of this Agreement. Any claim

that the Company has exercised such right and power contrary to the provisions of this Agreement may be taken up as a grievance.

Section 7—Apprenticeship Agreement

The Company shall maintain an apprenticeship agreement which shall be the subject of a separate agreement [51] between the Company and the Union and the California State Apprenticeship Council.

Section 8—Union Security

The National War Labor Board Directive Order of September 20, 1945 (Case No. 111-16460-D) provides as follows:

"(a) All employees, who, on October 9, 1945, are members of the Union in good standing in accordance with its Constitution and by-laws, and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated, or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the National War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the fifteen-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties, or if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties. [52]

"*The Company, for said employees, shall deduct from the first pay of each month the Union dues for the preceding month and remit the same to the duly designated officer of the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the Union in the same manner as dues collections."

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*This paragraph is applied as provided in Article VII, Section 5 of this Agreement.

ARTICLE II

UNION-COMPANY RELATIONS

Section 1—Strikes and Lockouts

For the duration of this Agreement the Union agrees that it will not cause or engage in any strike, slowdown or stoppage of work, and the Company agrees that it will not cause or engage in any lockout.

Section 2—Union Chairmen

As designated by the Union there shall be in the departments of the plant a Group Chairman for approximately every 35 to 50 employees and a Senior Chairman for each department or for every 9 Group Chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for Group Chairmen to serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company.

The Union will deliver to the Company once each month a current list of Senior Chairman by departments. The Union also agrees promptly to deliver to the Company written notices of any changes on such lists. As to any Senior Chairman of whose status as such Chairman the Company has had seven (7) days written notice, the Company will notify the Union four (4) days prior to the effective date of any permanent transfer of such Chairman.

Senior Chairmen will be permitted to take the necessary time off from work for the following Company-Union business:

(1) For the meetings with the Department Head provided for in Article III, Section 1. [53]

(2) For the weekly meeting with the Personal Representative to represent employees as provided for in Article VII, Section 1.

(3) For discussion with the Department Head of emergency complaints and grievances of employees.

Senior Chairmen and Group Chairmen will be permitted to take the necessary time off from work for the following Company-Union business:

(1) For so much of one-half hour of the shift, at a time mutually agreed upon by the Senior Chairman and the Foreman (normally the last half hour of the shift) as is required for Group Chairmen and Senior Chairmen to contact each other, for Chairmen to contact employees who have filed written grievances and for employees who have complaints to contact Chairmen.

(2) For discussion within the department with an authorized Business Representative of the Union when the latter finds it necessary to contact the Chairman on Company-Union business.

(3) For discussion with an employee of the employee's emergency complaint where the employee has obtained permission of his immediate full-time supervision to leave his work.

It is agreed that the contacts on Company time which are provided for in this Section will be no more frequent and no longer than the matter for discussion reasonably requires.

Section 3—Business Representatives and Union Officials

The Business Representatives of the Union shall have access to the Company's plants or to the departments of the Company's plants to which they are assigned, for the purpose of contacting Union Chairmen. Such visits shall be subject to such regulations as may be made from time to time by the Company, the U. S. Army, and the U. S. Navy. The Company shall not impose regulations which will exclude the Business Representatives from the plants nor render ineffective the intent of this provision.

No full-time Union official or Business Representative shall discuss any problem with employees (other than Chairmen) or with the supervision of any department, except as provided in Article III of the Agreement. [54]

Section 4—Cooperation

The Union and its members agree to report to the Company any acts of sabotage, subversive activities, theft, damage to or taking of any employee's, Company's and/or Government's property or work in process or materials, or any known threat of sabotage, subversive activities, or damage to or taking of such property, and the Union further agrees if any such acts occur to use its best efforts in assisting the Company and the Government to determine and apprehend the guilty party or parties.

Section 5—Bulletin Boards and Posting Notices

Space shall be provided on Company property at locations agreed upon for Union bulletin boards for the posting of the following types of notices:

(1) Notices of Union recreational and social affairs;

(2) Notices of Union elections;

(3) Notices of Union appointments and results of Union elections;

(4) Notices of Union meetings;

(5) Such other notices as may be mutually agreed upon by the Union and the Company.

The number of bulletin boards shall be governed by past practice.

Section 6—Solicitation of Memberships

Employees and Union Representatives shall not solicit union memberships or collect dues on Company property on the Company time of any employee, although such activities may be conducted by employees on Company property on the free time of the employees.

Section 7—Reports

The Union and the Company may request the following reports which are to be furnished as soon as possible; such requests shall be made only by the President or the Financial Secretary of the Union and the Director of Industrial Relations of the Company:

(1) Upon the request of the Company, the Union shall certify to the Company the number of its members.

(2) Upon the request of the Union, the Company shall certify to the Union, the number of employees [55] that are in the various occupational classifications recognized by this Agreement.

(3) Upon the request of the Union, the Company shall furnish the Union with lists of employees in their respective departments showing rates, classifications, and date of hiring and shifts.

(4) Upon hiring a new employee, the Company shall mail a copy of the hiring notice to the main Union Office at 5501 Lankershim Blvd., North Hollywood, within twenty-four (24) hours of the commencement of his employment.

ARTICLE III

GRIEVANCE PROCEDURE AND ARBITRATION

Section 1—Department Representation

Complaints arising out of employment shall, whenever possible, be concluded within the department by the cooperation of the Union Chairman and the supervisory staff. In order to accomplish this cooperative action the Department Head shall set aside a portion of one day per week to discuss with the Senior Chairman written grievances of employees which have been on file for not less than three working days and any problems arising regarding rates of pay, hours, and working conditions and the provisions of this Agreement. The Department Head shall set aside a portion of an additional day per week to discuss with the Senior Chairman written grievances of employees which have been on file for not less than three working days.

The days on which the Senior Chairman meets with the Department Head shall not be consecutive and shall not be longer apart than three working days.

Section 2—Method of Handling Grievances

An employee may first present his complaint to his Department Head, either in person or through his Union Chairman. However, if the employee so desires he may deliver a written grievance to his Senior Chairman and proceed in accordance with Step 1 of the grievance procedure.

The procedure on grievances shall be as follows:

Step 1. The employee shall state his grievance in writing on a form to be mutually agreed upon by the [56] Company and the Union and shall sign such grievance. The employee's Senior Chairman shall deliver such grievance to the Department Head and at the time of one of the regular meetings between the Department Head and the Senior Chairman an attempt shall be made to settle the grievance. However, if extremely urgent an attempt may be made to settle the grievance at the time of its delivery to the Department Head.

Step 2. The grievance may be presented by a Business Representative or an officer of the Union to the Industrial Relations Office of the Company and an attempt shall be made to settle the grievance.

Step 3. The grievance may be presented to the Labor Relations Subcommittee in accordance with the provisions of Section 3 of this Article and the Subcommittee shall attempt to settle the grievance.

Step 4. The grievance may be presented to the Labor Relations Committee and the Committee shall attempt to settle the grievance.

Step 5. The grievance may be presented to an arbitrator as provided in Section 5 of this Article.

The Company shall not confer with an employee with respect to a written grievance filed by him unless the employee's Senior Chairman has been notified and given an opportunity to be present.

The Union may file with the Industrial Relations Office of the Company written grievances, other than individual employee grievances, on a form to be mutually agreed upon by the Company and the Union with respect to any matter involving the interpretation or application of this Agreement. On such grievances Steps 1 and 3 shall be omitted and such grievances shall proceed as provided in Steps 2 and 4.

Grievances shall be filed promptly after the occurrence of the subject matter of the grievance. Matters occurring more than sixty (60) calendar days prior to the filing of a written grievance (fifteen (15) days on discharge, layoff and rehiring cases) shall not be made the subject matter of a grievance. Such time limit shall be extended where the delay in filing the grievance was due to the excusable neglect of the grieving employee or the Union. [57]

Grievances shall be promptly decided in each Step and if the aggrieved party desires to proceed to the next Step, such action shall be taken promptly. Grievances shall be deemed to be settled unless within fifteen (15) calendar days of the decision upon the grievance in any Step, the grieving party or the Union shall give written notice of

intent to proceed to the next Step. Such time limit shall be extended where the delay in proceeding to the next Step is due to the excusable neglect of the grieving employee or the Union.

Failure of the Company and the Union to reach a decision within six (6) working days in Step 1 and within fifteen (15) days in Step 2 shall entitle the grieving party to give written notice of intent to proceed to the next Step.

Section 3—Labor Relations Subcommittee

There shall be established a Labor Relations Subcommittee. The Subcommittee shall consist of four (4) members of the Union and four (4) representatives of the Company. The Subcommittee shall meet once each week except where no grievances are pending, and will handle all employee grievances which have proceeded through the previous steps of the grievance procedure without a settlement having been made.

The agenda for each meeting shall schedule those grievances on which written notice has been received by the Industrial Relations Office at least three (3) regular working days prior to the time of the meeting. Special meetings of the Subcommittee may be called by mutual consent. Any meeting may be cancelled or postponed with the mutual consent of the Union and the Industrial Relations Office of the Company.

Section 4—Labor Relations Committee

A Labor Relation Committee is hereby established which shall consist of representatives of the Union and the Company. The representatives of the Union shall consist of a board of five (5) elected members and the President and another official of the Union. The repre-

sentatives of the Company shall consist of a like number to be chosen in such manner as the Company may desire. This committee may establish subcommittees on a permanent or temporary basis. [58]

The Labor Relations Committee shall review and attempt to settle all grievances which shall remain unsettled after the procedure set forth in Sections 2 and 3 of this Article has been followed.

The decisions of the Labor Relations Committee shall be considered as final if a majority of the Union representatives and a majority of the Company representatives concur. If the committee fails to adjust a grievance either party may proceed as set forth in Section 5 of this Article.

A meeting of this Committee may be called by the Union or the Company to be held at a mutually agreeable date upon not less than three days' written notice served upon the other, provided, however, that such meeting shall be held within one week from receipt of such notice and that except by mutual consent no more than one meeting per week shall be held. Such notice shall specify the matters desired to be discussed at the meeting.

Section 5—Arbitration

Any grievance which has not been settled pursuant to Sections 2 through 4 of this Article and which involves the interpretation or application of this Agreement may be referred to arbitration. The Union shall deliver to the Company a written notice to that effect, including a statement of the issue to be arbitrated and the parties shall then by mutual agreement select an arbitrator.

Such arbitrator shall be paid by the parties hereto, and the expense of the arbitration shall be divided equally.

The arbitrator shall have the authority to interpret and apply the provisions of this Agreement, but shall not have authority to amend or modify this Agreement or to establish new terms and conditions of this Agreement.

There shall be no stoppage of work on account of any controversy which may be made the subject of arbitration, and the decision of the arbitrator shall be final and binding upon the Company, the Union and the employee, subject to the approval of the National War Labor Board where such approval is required. [59]

ARTICLE IV

SENIORITY

Section 1—Basis of Seniority

Seniority shall be the relative status of employees in respect of length of service with the Company, subject to the following qualifications:

(1) An employee hired to work at a plant outside the Los Angeles Metropolitan Area and remaining there or transferring from such plant to some other outlying plant, shall have seniority only at the outlying plant where he is working, dating from his original hire or rehire by the Company. A training period within the Los Angeles Metropolitan Area for service elsewhere shall not be considered as service in the Metropolitan Area. Pomona shall not be considered a part of the Metropolitan Area.

(2) An employee hired within the Los Angeles Metropolitan Area, or transferred to such area to work within it, shall have seniority within the Los Angeles Metropolitan Area dating from his original hire or rehire by the Company. In addition, if such

employee is thereafter transferred to an outlying plant, he shall also have seniority at the outlying plant where he is working dating from his original hire or rehire by the Company.

(3) An employee heretofore or hereafter transferred from an occupation covered by this Agreement to a salaried occupation shall continue to accumulate seniority, and in case of transfer to an occupation covered by this Agreement such seniority shall apply.

(4) An employee heretofore or hereafter transferred from an occupation covered by this Agreement to an hourly paid occupation not covered by this Agreement shall continue to accumulate seniority, and in case of subsequent transfer to an occupation covered by this Agreement such seniority shall apply. An employee hired within an hourly paid occupation not covered by this Agreement and thereafter transferred into an occupation covered by this Agreement, shall have seniority dating from his original hire or rehire by the Company. [60]

(5) Employees originally hired into the bargaining unit as set forth in the Agreement who left the Company to accept employment with Lockheed Overseas Corporation shall upon termination of their employment with Lockheed Overseas Corporation, be allowed immediately to return to employment with the Company with accumulated seniority.

(6) A part-time employee shall be entitled to credit for length of service in the same proportion that time regularly worked by such part-time employee bears to the time regularly worked by a full

time employee except for purposes of layoff and rehiring after a layoff.

For purposes of layoff, part-time employees shall not be considered to have acquired seniority.

Section 2—Establishment of Seniority Rights

Three months after an employee starts to work he shall acquire seniority rights and his seniority shall be retroactive to his starting date.

Section 3—Layoffs

(A) General Layoff Procedure. Layoffs shall be made in order of Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority, the Company may, in its discretion, retain them in order of their Company-wide seniority, regardless of occupation, where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination in the exercise of such discretion may be taken up as a grievance. Employees who have not acquired seniority rights may be laid off without regard to relative length of service.

The word "occupation" as used herein, includes all grades and leadmen within an occupation.

(B) Temporary Layoffs. Temporary layoffs may be made for periods not exceeding fifteen (15) working days. Such layoffs shall be made in order of Company-wide seniority applied by occupation within the particular unit of organization, work unit or project affected where ability, skill and efficiency are substantially equal.

The word "occupation" as used herein includes all grades and leadmen within an occupation. [61]

(C) Emergency Reduction of the Working Force.

Step 1. When an emergency reduction of the working force is necessary, such as is occasioned by the cancellation of any contracts in whole or in part, the first step in the Emergency Reduction of the Working Force shall be the layoff of employees affected, without regard to the General Layoff Procedure, for the period of time necessary to put into effect Step 2.

Step 2. The second step of the Emergency Reduction of the Working Force shall be the carrying out of the General Layoff Procedure. Such assignments shall not be governed by the Rehiring Procedure and shall be made as promptly as is reasonably possible.

(D) Top Seniority for Union Chairmen for Purpose of Layoffs. For the purpose of applying the Temporary and General Layoff Procedures, Union Chairmen who have acquired seniority shall be deemed to have top seniority so long as they remain Chairmen. If the application of the General Layoff Procedure will result in the retention of more of such Chairmen in a group or department than are provided for in Article II, Section 2 of this Agreement, the Company shall prepare and furnish to the Union a list of all Chairmen in the locations where the surplus exists. The Union shall upon request of the Company promptly designate the Chairmen who are to remain in that capacity and the Chairmen not to be retained as Chairmen shall be governed by the seniority rules applicable to the layoff of other employees. During a Temporary Layoff and during the period between the first and second steps in an Emergency Reduction of the Working Force, the terms of office of laid-off Union Chairmen shall be deemed to continue.

Section 4—Rehiring

Laid-off employees in any occupation shall be rehired in order of Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority the Company may, in its discretion, rehire them in order of their Company-wide seniority, regardless of occupation where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination [62] in the exercise of such discretion may be taken up as a grievance.

In the event an occupational seniority list is exhausted, the Company will rehire in such occupation, employees in order of Company-wide seniority regardless of occupation where ability, skill and efficiency are substantially equal.

The word "occupation" as used herein includes all grades and leadmen within an occupation.

If because of sickness, injury, or causes beyond his control a laid-off employee fails to report for an interview for work at or before a time specified by the Company on the second working day after the date on which the Company shall have sent a notice by wire or registered mail to such employee at his last address filed with the Company, or at such other date thereafter as the Company may designate, the employee shall not be entitled to the job but shall be entitled to hold his place on the seniority list and to be considered for the next vacancy for which he is eligible. The employee shall be required to furnish evidence of sickness or injury to the satisfaction of the Company's Medical Department.

Section 5—Physically Handicapped Employees

Physically handicapped employees (blind, those who are deaf and dumb, or have similar disabilities) may be retained or rehired regardless of the seniority principle stated in this Article in accordance with such mutual agreement as hereafter may be entered into between the Company and the Union.

Section 6—Employees Entering Armed Forces

Employees (other than temporary employees) who shall have left the employment of the Company for the purpose of entering the armed forces of the United States, shall be re-employed by the Company in accordance with the provisions of the Selective Training and Service Act of 1940, as such Act may be amended.

Section 7—Information to be furnished to the Union

(1) On General Layoff Procedure the Company will furnish the following:

(a) At the time of the application of the General Layoff Procedure, a copy of the seniority roster used [63] by the Company in applying such procedure; such seniority roster will list employees in the affected occupation in order of their seniority.

(b) Seniority roster by occupation of all laid-off employees as of a date immediately after the application of the General Layoff Procedure.

(c) In so far as is practicable, prior to the date of the layoff, the anticipated date, the approximate size and the probable occupations affected.

(2) On an emergency reduction of the working force the Company will furnish the Union the following after adjustments have been made in accordance with the General Layoff Procedure:

(a) Seniority roster by occupation of employees in the service of the Company in the occupations affected as of a date immediately preceding the adjustments;

(b) Seniority roster by occupation of employees in the service of the Company in the occupations affected as of a date immediately after the adjustments;

(c) Seniority roster by occupation of all laid-off employees as of a date immediately after the application of the General Layoff Procedure.

(3) The Company will furnish the Union a monthly list of employees dropped from lists (1)(b) and (2)(c) by reason of loss of seniority.

Section 8—Loss of Seniority

An employee shall lose his seniority upon the happening of any one of the following events:

(1) Resignation (a five-day unreported absence without a reasonable explanation shall be considered a resignation);

(2) Discharge for just cause;

(3) If, after a layoff, the employee is notified to report for an interview for work, by registered mail, or telegram, addressed to him at the last address filed by him with the Company, and fails within one (1) week after notification or such additional time as the Company may

grant either to report for an interview or to deliver to the Company a reasonable excuse for failure to report; [64]

(4) Failure, after an interview, to report for work at the time designated by the Company or to furnish to the Company a reasonable excuse for failure to report;

(5) Failure to give written notice of his availability for employment together with his then current address delivered by registered mail, telegram, or in person to the Industrial Relations Office of the Company every thirty (30) days after a layoff or to furnish, within one (1) week after the expiration of the thirty-day period, a reasonable excuse for failure to give such written notice;

(6) Layoff for a period of twelve (12) consecutive months. If the Company should, within six (6) months after the expiration of twelve (12) consecutive months following a layoff, rehire an employee who had acquired seniority, such employee shall be credited with the seniority he held at the expiration of such twelve-month period.

Section 9—Promotion and Upgrading

On promotion to higher rated jobs within the bargaining unit, and on upgrading from lower grades to higher grades in the same occupation, consideration shall first be given to those employees within the smallest unit under full-time supervision where the opening exists; then within the department; then within the division; then within the branch; then within the Company.

In selecting an employee for such promotion or upgrading to an available opening the following standards shall apply:

(1) Availability for release—Production requirements will be considered insofar as they pertain to the release of an employee from his present job. In general the release of an employee for promotion or upgrading will be granted unless it is determined by supervision at the office level that, because of production requirements, the employee cannot be released.

(2) Where ability, skill and efficiency are substantially equal, preference shall be given to the most senior qualified employee within the applicable unit.

(3) The fact that an employee has been at the maximum rate of his grade for sixteen (16) weeks shall be given full consideration.

(4) Employee preference as indicated by employee [65] written requests filed with the Company shall be given full consideration.

Section 10—Transfers

Transfers shall be made on the basis of operational requirements of the Company. On transfers to vacancies, consideration will be given to employees who have filed written requests with the Company and, subject to operational requirements, such requests will be considered on the basis of seniority where ability, skill and experience are substantially equal. Such consideration will be given first to such employees within a department; then within the division; then within the branch; then within the Company. The word "transfers" as used herein does not apply to promotions to higher rated jobs; to upgrading from lower grades to higher grades in an occupation or to downgrading to lower rated jobs.

Section 11—Downgrading

Employees may be downgraded to lower rated jobs only for the following reasons:

(1) For unsatisfactory performance on the employee's present job.

(2) In the event continued performance of employee's present job will injure the health of the employee.

(3) In the event there are changes in production methods, production schedules or changes in the method of doing the job, which either eliminate or materially change the work performed by the employee to such an extent that the majority of the work performed by, or assigned to the employee, falls within the job description of a lower rated job.

(4) The National Labor Board Directive Order of September 20, 1945 (Case No. 111-16460-D) provides as follows:

"In the event an employee is not properly classified in accordance with the job description in effect. However, any employee who has been classified in his present job for 16 weeks or longer shall be conclusively presumed to be receiving the proper rate. The Company shall not downgrade him except in accordance with one of the other subdivisions of this section. The Company shall be permitted, however, upon proof that the employee is mis-[66] classified, to reclassify him in another job at a rate no lower than that which he presently receives. In that event, the employee shall receive at least 10 days' notice of such reclassification. If the employee contests the Company's finding that he has been misclassified, he may file a grievance."

The employee shall be notified at or before the time of his assignment to a lower rated job of the date on which his change in rate and classification are to be made effective. At the time of such notification, he shall be permitted to file with the Company a written request for transfer.

Downgrading from a higher grade to a lower grade within an occupation into vacancies caused by the laying off of employees, shall be made within the employee's department on the basis of seniority where ability, skill and efficiency are substantially equal. If the Company should transfer an employee to another department and then downgrade him, such downgrading shall be made in that department in accordance with the principles in this paragraph.

When management deems its necessary in the interest of production efficiency to temporarily (less than three months) assign employees to work on lower rated jobs, no change in classification or pay rate shall be effected. When management deems it necessary to assign employees either temporarily or permanently to lower rated jobs, management will at the time of change notify the employees of the nature of the change and whether it is temporary or permanent. In the event such temporary assignment exceeds three (3) months, said lower rated job shall be considered a vacancy and be filled accordingly.

ARTICLE V

EMPLOYMENT CONDITIONS

Section 1—Sanitary, Safety and Health Conditions

The Company agrees to maintain sanitary, safe and healthful conditions in all its plants and working establishments in accordance with the laws of the State, County

and City of its place of operation. Proper and modern safety devices shall be provided for all employees [67] working on hazardous or unsanitary work, such devices (except articles of clothing) to be furnished by the Company. No employee shall be discharged for refusing to work on a job not made reasonably safe or sanitary for him, or that might unduly endanger his health.

All recommendations and grievances concerning sanitation, safety, health and other working condition factors will be presented through the procedure set forth in Article III.

One member of each of the Company's General Safety Committees shall be elected by the Union.

Section 2—Hiring Age

The Company agrees that there shall be no established maximum age limit in the hiring of employees.

Section 3—Employment Not Jeopardized

Union membership or legitimate Union activity will not jeopardize an employee's standing with the Company or opportunity for advancement.

Section 4—Educational Facilities

The Company shall continue to cooperate with the Union's Educational Committee to make certain educational facilities available to its employees, in order that they may receive training to qualify them for work in more than one department in the plants, if they so desire.

ARTICLE VI

EMPLOYEE PRIVILEGES

Section 1—Vacations

(A) Vacation Service and Privileges of an Employee on the Active Pay Roll of the Company:

(1) An employee with less than five (5) years' seniority on his vacation eligibility date shall be entitled to one (1) week's vacation with pay. In addition thereto each such employee who has not used all of his sick and injury leave during the year of service preceding his vacation eligibility date shall, at his option, be entitled to one additional week's vacation, with pay for such unused sick and injury leave, or to pay for such unused sick and injury leave without an additional week's vacation. [68]

(2) An employee with five (5) years' or more seniority on his vacation eligibility date shall be entitled to two (2) weeks' vacation with pay.

(3) An employee's vacation eligibility date occurs upon the first day of the month in which he will have accumulated one year of service subsequent to his last vacation eligibility date or, in case of an employee's first vacation, subsequent to the date when he started to work.

(4) Pay for a week's vacation for a full-time employee shall be construed as follows:

(a) If, at the time of an employee's vacation eligibility date, a majority of the employees in the plant in which he is employed are regularly scheduled to work in excess of five (5) standard daily shifts per week, pay for one week's vaca-

tion means pay for forty-eight (48) hours at the employee's regular base rate of pay on such eligibility date.

(b). If, at the time of an employee's vacation eligibility date, a majority of the employees in the plant in which he is employed are regularly scheduled to work five (5) standard daily shifts per week, pay for one week's vacation means pay for forty (40) hours at the employee's regular base rate of pay on such eligibility date.

(c) An employee's regular base rate of pay does not include overtime; shift bonus, or any other premium.

(5) Pay for unused sick and injury leave shall be construed as an amount equal to the hours of unused sick and injury leave times the employee's base rate of pay at his vacation eligibility date.

(6) Pay for the vacation of an employee who is a part-time employee as of his vacation eligibility date shall be proportionately reduced. For example, an employee who is regularly scheduled to work six (6) days per week, four (4) hours each day, will be entitled to one (1) week's vacation with pay for twenty-four (24) hours at the employee's base rate of pay. [69]

(B) Vacation Service and Privileges of an Employee Who Terminates, or is Terminated, Laid-Off or on Leave of Absence:

(1) An employee who has become entitled to a vacation with pay and who hereafter terminates or is terminated or laid off prior to the taking of his vacation shall receive such pay as he is entitled to

under the provisions of subdivisions (A) (1) or (A) (2) of this Section.

(2) Until the termination of the period of the Unlimited National Emergency proclaimed by the President of the United States, or until the National War Labor Board's Directive Order of March 3, 1943, In the Matter of the West Coast Airframe Companies, as heretofore or hereafter amended, has been terminated or has ceased to be effective, the following employees shall be paid pro rata vacation pay for a portion of a year of service:

(a) An employee who has become eligible for a vacation and who, prior to his next vacation eligibility date, is laid off under such circumstances that the Company anticipates that the layoff will last more than ninety (90) days or if the layoff lasts more than ninety (90) days and the employee makes written request for such payment.

(b) An employee who shall have terminated his employment on or after March 3, 1943, in order to enter the armed forces, regardless of whether he shall have then become entitled to his first vacation.

(3) After the termination of said Unlimited National Emergency, or after said Directive Order of the National War Labor Board has been terminated, or has ceased to be effective, no prorated vacation allowance shall be paid to any employee.

(4) For the purpose of acquiring vacation privileges, an employee shall be credited with all service

accumulated up to the time of his termination, layoff or leave of absence provided:

(a) He returns to work for the Company after the period of such termination, layoff or leave of absence; and [70]

(b) He retains his seniority rights with the Company during such period; and

(c) He was not paid a prorated vacation allowance.

(5) Time spent by an employee during a period when he is severed from the active payroll due to termination, layoff or leave of absence shall not constitute service time for the purpose of acquiring vacation privileges; provided, however, that time lost, not to exceed six (6) months, due to occupational injury or occupational illness shall be counted for the purpose of computing service time if the employee returns to the active payroll of the Company.

(C) Transition from Existing Vacation Plan in Respect to Certain Employees Hired Prior to March 1, 1941:

(1) The vacation eligibility date of an employee hired prior to March 1, 1941, who has less than five (5) years' seniority at the time this Section shall have become effective and who shall reach the fifth anniversary of his seniority date prior to March 1, 1946, shall be the first day of the month in which such fifth seniority anniversary date occurs.

(2) On such vacation eligibility date, such employee shall be entitled to the vacation privileges established in subdivision (A) (2) of this Section. Thereafter, his vacation eligibility date shall be as provided in subdivision (A) (3) of this Section.

(D) Scheduling of Vacations:

(1) Vacations shall not be cumulated from one year to another but must be taken within twelve months after the eligibility date except that one vacation shall not be taken within two months of the next vacation.

(2) Vacations shall be taken when they interfere least with production. So far as is practicable vacation time preference will be given to employees with the greatest seniority.

(E) Prior Service Time:

This Section shall be applicable to all employees who become eligible for vacation privileges subsequent to the date of approval of the Section by the National War Labor Board.* Service time prior to the date of [71] such approval shall count toward an employee's vacation eligibility date.

(F) Effective Date:

This Section is subject to the approval of the National War Labor Board and shall become effective upon such approval.*

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*Approved June 8, 1945.

Section 2—Sick and Injury Leave

(A) Sick and Injury Leave Benefits of an Employee on the Active Pay Roll:

(1) In the event of an employee's occupational or non-occupational sickness or injury, or in the event of his absence because of death in his immediate family, such employee shall be entitled to a total of six (6) days' sick and injury leave with pay during each year of his service. Such leave shall not exceed three (3) days at any one time. No sick and injury leave shall be paid for part-day absences. An employee shall not be entitled to use his sick and injury leave until after he has completed twelve (12) weeks' continuous service from the date when he starts to work.

(2) A full-time employee means an employee who is regularly scheduled to work five or more standard daily shifts per week.

(3) Pay for one day's sick and injury leave for a full-time employee means pay for eight (8) hours at the employee's regular base rate of pay. An employee's regular base rate of pay does not include overtime, shift bonus, or any other premium.

(4) Pay for sick and injury leave of a part-time employee shall be proportionately reduced.

(B) Sick and Injury Leave Benefits of an Employee Who Terminates or is Terminated, Laid Off or on Leave of Absence:

(1) Service time of an employee shall be accumulated toward his year of service regardless of termination, layoff or leave of absence provided:

(a) He returns to work for the Company after the [72] period of such termination, layoff or leave of absence; and

(b) He retains his seniority rights with the Company during such period; and

(c) He was not paid a prorated vacation allowance.

(2) Time spent by an employee during a period when he is severed from the active pay roll due to termination, layoff or leave of absence shall not constitute service time for the purpose of acquiring sick and injury leave benefits; provided, however, that time lost, not to exceed six (6) months, due to occupational injury or occupational illness shall be counted for the purpose of computing service time if the employee returns to the active pay roll of the Company.

(3) Termination, layoff or leave of absence shall not entitle an employee to be paid any pro rata allowance for unused sick and injury leave for a portion of a year of service.

(C) Verification and Notification:

All sick and injury leave is subject to verification by the Company's Medical Division. An employee shall notify the Company within twenty-four (24) hours of his illness or injury or death in his immediate family requiring his absence from work or furnish a reasonable excuse for failure to notify the Company.

(D) Prolonged Disability:

An employee shall not be terminated by the Company because of a prolonged continuous illness or injury provided the period of disability is not longer than six (6) months and, upon being pronounced physically and mentally fit by the Company, shall be reinstated to the same or substantially equivalent job if such job is available to him in accordance with his seniority rights.

Prior Service Time:

Service time prior to the date of approval of this Section by the National War Labor Board* shall count toward an employee's year of service.

Effective Date:

This Section is subject to the approval of the National War Labor Board and shall become effective upon such approval.* [73]

Section 3—Holidays

(1) The Company recognizes the following six (6) legal holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; and Christmas Day.

(2) Full pay (eight (8) hours at straight time) shall be paid to all employees whenever one of these holidays falls on Monday through Friday or on Saturday if the work schedule of the majority of employees includes Saturdays. In addition, straight time shall be paid for hours worked on holidays up to eight (8) hours; thereafter two times the regular rate shall be paid.

*Approved June 8, 1945.

(3) In order to be eligible for holiday pay, an employee must have worked or have been on a vacation or a paid leave (other than paid sick leave) on the day before or the day after the holiday; except that when the holiday falls on the day before employment or the day after termination, or during an employee's vacation or leave, no pay under this Section shall be granted.

(4) Should a recognized holiday fall upon a Sunday, the Monday immediately following shall be observed as the holiday.

(5) During such period as pay for holidays is restricted by Executive Order 9240,** or other law or regulation, the premium pay rate for hours worked on any of said holidays, as provided in Subdivision (2) of this Section, shall be one and one-half times the employee's regular rate of pay.

Section 4—Leaves Without Pay

Leaves of absence without pay may be granted employees for a period not to exceed ten (10) working days during the year. For good and sufficient reason the Company may extend the period of the leave. The leave of absence shall not in any way jeopardize the employee's standing with the Company.

On all leaves of absence of ninety (90) calendar days or less, an employee shall accumulate seniority. On leaves of absence exceeding ninety (90) calendar days, seniority shall accumulate after ninety (90) days only if specified by the terms of the leave; provided, however, that on leaves of absence heretofore or hereafter granted for [74] Union business of Lodge 727, the employee shall accumulate seniority during such leaves.

**Executive Order 9240 was revoked August 21, 1945.

The Union may request, and the Company will grant, leaves of absence of three (3) days or more without pay, to Union members for Union business of Lodge 727 and excused absences of less than three (3) days without pay to Union members for Union business of Lodge 727. Such leaves and excused absences will be requested only in reasonable numbers and at reasonable times upon twenty-four (24) hours' written notice to the Company except when such notice is waived by mutual agreement.

ARTICLE VII

PAY PROVISIONS

Section 1—Periodic and Special Reviews

The rate and record of each employee shall be reviewed every sixteen weeks with a view to wage adjustment in accord with his proven ability, production, etc. This periodic review is not to be construed to mean that any employee is guaranteed an increase as a result of this review.

Periodic reviews of employees shall be administered in such a way as to allow the Union to represent the employee at the time of his review. Any such review that is not satisfactorily concluded automatically goes to Step 2 of the grievance procedure.

A special review for any employee shall be made in the event of a change of work or other condition which may warrant such special review.

Section 2—Overtime Pay

(1) Hours worked in excess of eight (8) hours in any one day of an employee's work week shall be paid for at one and one-half times the regular rate of the employee.

(2) During such period as overtime pay is restricted by Executive Order 9240* or other law or regulation, the following provisions shall be applicable:

(a) For purposes of computing overtime pay, the work week shall consist of seven (7) consecutive days commencing on Monday of each calendar week and ending on the following Sunday.

(b) An employee shall be paid time and one-half his regular rate of pay for work performed on his sixth day worked in the [75] work week, and two times his regular rate of pay for work performed on his seventh day worked in the work week.

(c) In computing the sixth day worked in the work week, days upon which an employee works any portion of the day shall be counted as days worked.

(d) In computing the sixth day worked in the work week, days upon which an employee is absent the full day for any reason shall not be counted as days worked, except:

1. Designated holidays on which no work is performed.

2. Days on which an employee reports with the reasonable expectation of work and is sent home because of a lack of work or other reason beyond his control.

3. Paid vacation days.

4. Paid days of service as an election officer at a federal, state or municipal election.

5. Days upon which certain Union officers and committeemen are absent for certain purposes, such officers and committeemen and purposes to be mutually agreed upon by the Company and the Union.

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*Executive Order 9240 was revoked August 21, 1945.

(e) In computing the seventh day worked in the work week, days upon which an employee is absent for part of the day without justifiable reason shall not be counted as days worked; provided, however, that it shall be permissible for the employee to make up the time lost by such voluntary absence by work on the seventh day of the work week and to be compensated at the rate of double time for those hours worked on such seventh day after the time lost has been made up. "Justifiable reasons" for part day absences under this Section are as follows:

1. Illness or injury of the employee;

2. Critical illness or death in the immediate family of the employee;

3. Required appearance before Draft Board for Selective Service business;

4. Authorized Union Business, cleared through the Industrial Relations Office of the Company;

5. Compulsory witness or jury duties;

6. Service as an election officer at a federal, state, or municipal election;

7. Leaving work at Company direction.

(f) In computing the seventh day worked in the work week, days upon which an employee is absent the full day for any reason shall not be counted as days worked, except designated holidays on which no work is performed and days on which an employee reports with the reasonable expectation of work and is sent home because of a lack of work or other reason beyond his control.

(g) An employee shall not receive overtime pay for work on Saturday or Sunday or any particular day of the work week as such.

(3) In the absence of restrictions on overtime pay under [76] Executive Order 9240* or other law or regulation, the following provisions shall be applicable:

(a) Each employee whose regular day off in his regularly scheduled work week is Sunday shall be paid time and one-half his regular rate of pay for work on Saturdays and two times his regular rate of pay for work on Sundays.

(b) Each employee whose regular day off in his regularly scheduled work week is other than Sunday shall be paid time and one-half his regular rate of pay for work on the day preceding his regular day off, and two times his regular rate of pay for work on his regular day off.

Section 3—Hours and Days of Work

(1) For all employees eight (8) hours shall constitute a standard day's work to be performed within nine (9) consecutive hours.

(2) In the factory, the standard day shift shall be from 7:00 a. m. to 3:30 p. m.; the standard night shift shall be from 4:00 p. m. to 12:30 a. m.; and the standard graveyard shift shall be from 12:30 a. m. to 7:00 a. m.

(3) In the office and technical departments, the standard day shift shall be from 8:00 a. m. to 4:45 p. m., or 7:30 a. m. to 4:00 p. m. or 4:15 p. m., except where the nature of the work requires that factory hours be maintained.

(4) An employee commencing his work day between the hours of 4:00 a. m. and 10:59 a. m. is considered to be in the day shift rate period. An employee commencing

*Executive Order 9240 was revoked August 21, 1945.

his work day between the hours of 11:00 a. m. and 8:29 p. m. is considered to be in the night shift rate period. An employee commencing his work day between the hours of 8:30 p. m. and 3:59 a. m. is considered to be in the graveyard shift rate period.

(5) For firemen the standard day shift shall be either 7:00 a. m. to 3:00 p. m. or 8:00 a. m. to 4:00 p. m.; the standard night shift shall be either 3:00 p. m. to 11:00 p. m. or 4:00 p. m. to 12:00 midnight; the standard graveyard shift shall be either 11:00 p. m. to 7:00 a. m. or 12:00 midnight to 8:00 a. m. Variations from such standard shift hours may be established by mutual agree- [77] ment between the Company and the Union. Firemen shall be on duty during their entire shift period.

(6) All deviations from the standard shift hours shall be cleared with the Union and mutually agreed upon.

(7) Five (5) days, Monday through Friday, shall constitute the standard work week, unless or until the Company is instructed by the Federal Government to alter or change the work schedule now in effect. However, the Company reserves the right to engage, alter, or rotate maintenance, personnel service, administrative service, firemen or employees engaged in preparing the pay roll to work five (5) consecutive days other than those constituting the standard work week. It is specifically agreed that these employees will not be engaged in production work. Maintenance employees shall not be assigned to odd work weeks except for the purpose of accomplishing work which cannot, within the reasonable judgment of the Company, be accomplished during the standard work week without interfering with the operation of the Company.

(8) Overtime work shall be voluntary only on Sunday or in case of an odd work week employee, only on his regular day off. Any claim of an employee that he has been required to work unreasonable or excessive overtime may be made the subject of a grievance.

Section 4—Premium for Hours and Days of Work

(1) Night shift employees shall receive a bonus of six (6) cents an hour.

(2) Third shift employees shall receive eight (8) hours' pay plus a six (6) cent an hour bonus for working six and one-half (6½) hours.

(3) All employees working other than the standard work week shall receive a premium of three (3) cents an hour in addition to other bonuses.

Section 5—Pay Roll Deductions for Union Fees and Dues

The Company will deduct from his wages, and turn over to the Union, the Union initiation fee and dues of each employee who individually and voluntarily authorizes the Company in writing to make such deductions. Such pay roll deductions shall be made in accordance with the following provisions:

(1) Such pay roll deductions shall be made only in [78] accordance with instructions upon authorization cards. Such cards shall be in the size and form presently used subject to change by mutual agreement between the Company and the Union. In order to become effective, the authorization cards shall be delivered by the Union to the Pay Roll Department of the Company.

(2) Deductions for the initiation fee shall be made from the employee's pay check for the first pay period

ending in each month in the amount and from the number of such checks as specified by the employee on the fee deduction authorization card.

(3) Deductions for dues shall be made from the employee's pay check for the first pay period ending in each month in the amount specified by the employee on the dues deduction authorization card. In the event a deduction for dues is not made on one or more consecutive regular pay roll deduction dates due to lack of earnings or insufficient earnings by the employee, then on the next regular pay roll deduction date that the employee has sufficient earnings one double deduction shall be made.

(4)* Cancellation of pay roll deductions for Union dues shall be made in the following manner: The employee shall give notice, in writing, of his or her desire for deductions to stop, and be delivered by him or her to the business office of the Union. The Union shall forward this notice to the Pay Roll Department of the Company.

(5) In order to begin or stop such pay roll deductions, written notice must be received by the Pay Roll Department of the Company at least two weeks prior to the regular pay roll deduction date.

The Company's obligations to make such deductions shall terminate in the event the employee should cease to be an employee as defined in Article I, Section 2 of this Agreement.

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*See also Article I, Section 8—Union Security.

Section 6—Pay Roll Deductions—Company Reimbursement

Pay roll deductions may be made to reimburse the Company as follows:

(1) All costs of tools and equipment issued to an em-
79] ployee but not returned by him, such cost to be subject to wear of the tools.

(2) For each tool check lost and not returned, the sum of twenty-five cents (25c).

(3) For money paid by the Company to a creditor or officer of the law for an indebtedness of an employee, provided demand is made upon the Company according to law.

(4) For any indebtedness due to the Company covering purchases made by an employee through the Company.

(5) For any loans or advances made to the employee by the Company.

(6) For each employee identification card or identification badge lost or destroyed, a sum of one dollar ($1.00).

(7) For a lost key, a sum of one dollar ($1.00).

Section 7—Report Time

An employee called to work shall receive a minimum of four (4) hours' pay in the shift to which he is called.

Section 8—Pay Period

Pay checks to employees shall be issued within eight (8) days after the end of the pay period and shall represent the earnings of the employee from Monday to and including Sunday of such pay period.

Section 9—Lost Time

Deductions for time off, whether due to tardiness or other causes, shall be at the rate of one-tenth of an hour's pay for each tenth of an hour or fraction thereof lost from work.

ARTICLE VIII

PAY RATES

Section 1—National War Labor Board Directive Order

The National War Labor Board Directive Order of March 3, 1943, as heretofore or hereafter amended shall govern the relations between the parties. In applying the grievance and arbitration procedure, such Directive Order shall be considered a part of this Agreement. If such Directive Order should be terminated or cease to be effective, its provisions shall continue to govern the relations between the parties until this Agreement is modified, amended or terminated. [80]

Section 2—Pay for Leadmen

Leadmen shall be paid six (6) cents an hour more than the highest paid employee in the group led.

Section 3—Job Descriptions and Evaluations and Wage Rate Schedules

The National War Labor Board Directive Order of September 27, 1945 (Case No. 111-16460-D) provides as follows:

"The Company and the Union, as promptly as possible, shall restudy and rewrite all job descriptions currently in effect within the bargaining unit or which become effective during the terms of this agreement.

"Each job shall be evaluated in accordance with an evaluation plan which is to be mutually agreed upon by the Union and the Company. Wage rates established, based upon the mutually agreed upon evaluations, shall be subject to the approval of any Federal agency then having jurisdiction thereover."

Dated this 4th day of June, 1945.

Aeronautical Industrial District Lodge 727 of Burbank

By Thomas E. McNett President

John P. Cooney Wm. C. Martin Frank J. Keefe Gary Garrett C. O. McEfee William Phillips

International Association of Machinists

By Roy M. Brown Vice President

Lockheed Aircraft Corporation

By Robert E. Gross President

Courtlandt S. Gross Vice President & General Manager

Cyril Chappellet Vice President

William W. Aulepp Director, Industrial Relations [81]

* * * * * * * * *

[Endorsed]: Filed Nov. 27, 1946. Edmund L. Smith, Clerk.

[Title of District Court and Cause]

ANSWER OF RESPONDENT LOCKHEED AIRCRAFT CORPORATION, A CORPORATION

To the Honorable the Judges of the District Court of the United States in and for the Southern District of California, Central Division:

Now comes Lockheed Aircraft Corporation, a corporation, respondent herein, in answering petitioners' petition on file herein admits, denies and alleges as follows:

I.

Answering paragraph IV of said petition on file herein, respondent admits that the petitioners, and each of them, were, upon their application therefor, reemployed and restored to their former positions in the employ of respondent. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph IV of petitioners' petition on file herein. [88]

II.

Answering paragraph VIII of said petition on file herein, respondent admits that during the later part of June, 1946, the respondent made a general layoff of field and service mechanics, grade "A", and that in the course thereof, each of the petitioners was laid-off. Respondent further admits that at the time said petitioners, and each of them, were laid-off, as aforesaid, respondent retained in its active employ certain Union chairmen with less

seniority, i. e., "length of service with the Company", than petitioner's. Other than heretofore admitted, respondent denies each and every and all of the allegations in the said paragraph VIII of petitioners' petition on file herein.

III.

Answering paragraph IX of said petition on file herein, respondent admits that the petitioners were laid-off on the respective dates set forth in the said paragraph of said petition, and further admits that the respondent, at the time of said layoff of said petitioners, retained in its active employ in the occupation group in which petitioners were employed certain Union chairmen who had less seniority, i. e., "length of service with the Company", than any of the petitioners. Respondent further admits that the ability, skill and efficiency of the petitioners, and each of them, was substantially equal to that of any of the Union chairmen so retained, and that the layoff of said petitioners, and each of them, as aforesaid, was made on the sole basis of Company-wide seniority and in accordance with the provisions of the collective bargaining agreement then in effect between respondent and Aeronautical Industrial District Lodge #727 of the International Association of Machinists. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph IX of petitioners' petition on file herein.

IV.

Answering paragraph X of said petition on file herein, respondent admits that following the aforesaid layoff petitioners Campbell and Joplin were restored to active employment by respondent on July 15, 1946, and that petitioner Kirk was [89] restored to active employment by respondent on July 16, 1946. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph X of petitioners' petition on file herein.

Wherefore, Respondent Respectfully prays:

That judgment be entered in favor of said respondent and against said petitioners, denying to said petitioners, and each of them, the relief sought in the said petition or any other relief and awarding to respondent its costs of suit incurred herein.

ROGER B. SMITH
ROBERT H. CANAN
MARK E. TRUE
Attorneys for Respondent
By Mark E. True [90]

[Verified.]

[Endorsed]: Filed Dec. 13, 1946. Edmund L. Smith, Clerk. [91]

In the District Court of the United States in and for the Southern District of California
Central Division

No. 6028-B Civil

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, and MALCOLM E. KIRK,

Petitioners,

vs.

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondent,

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Intervener.

ANSWER OF AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727

Leave of Court having first been secured, comes now the Aeronautical Industrial District Lodge 727 of the International Association of Machinists, an unincorporated Association, as intervener herein, and in answer to the petitioner's Petition on file herein, admits, denies and alleges as follows:

I.

Admits all the allegations contained in paragraphs III, IV, V, VI and VII of the Petition.

II.

Answering Paragraph VIII of said Petition on file herein, respondent admits that during the later part of

June, 1946, the respondent made a general layoff of field and service mechanics, [92] grade "A", and that in the course thereof, each of the petitioners was laid off. Respondent further admits that at the time said petitioners and each of them, were laid off, as aforesaid, respondent retained in its active employ certain Union Chairmen with less seniority, i. e., "length of service with the Company", than petitioners'. Other than heretofore admitted, respondent denies each and every and all of the allegations in the said paragraph VIII of petitioners' petition on file herein.

III.

Answering paragraph IX of said Petition on file herein, respondent admits that the petitioners were laid off on the respective dates set forth in said paragraph of said Petition, and further admits that the respondent, at the time of said layoff of said petitioners, retained in its active employ in the occupation group in which petitioners were employed certain Union chairmen who had less seniority, i. e., "length of service with the Company", than any of the petitioners. Respondent further admits that the ability, skill and efficiency of the petitioners, and each of them, was substantially equal to that of any of the Union chairmen so retained, and that the layoff of said petitioners, and each of them, as aforesaid, was made on the sole basis of Company-wide seniority and in accordance with the provisions of the collective bargaining agreement then in effect between respondent and Aero-

nautical Industrial District Lodge #727 of the International Association of Machinists. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph IX of petitioners' petition on file herein.

IV.

Answering paragraph X of said Petition on file herein, respondent admits that following the aforesaid layoff, petitioners Campbell and Joplin were restored to active employment by respondent on July 15, 1946, and that petitioner Kirk was restored to active [93] employment by respondent on July 16, 1946. Other than heretofore admitted, said respondent denies each and every and all of the allegations in said paragraph X of petitioners' petition on file herein.

For a Second, Separate, Distinct and Affirmative Defense, this answering defendant in intervention alleges:

I.

That the plaintiff, James L. Campbell, became affiliated with and became a member of the organization of this answering intervener on or about the 2nd day of November, 1942, and terminated his membership therein on or about the 1st day of March, 1946; that the plaintiff, Mitchell B. Joplin, became affiliated with and became a member of the organization of this answering intervener on or about the 18th day of November, 1943, and ever since and has been and still is a member and affiliated with

this answering intervener; that the plaintiff, Malcolm E. Kirk, became affiliated with and became a member of the organization of this answering intervener on or about the 12th day of August, 1943 and ever since and has been and still is a member and affiliated with this answering intervener.

II.

That at all times during which the petitioners were employed by the respondent, Lockheed Aircraft Corporation, the seniority of employees was and is governed and controlled by contractual obligations made and entered into by and between the respondent, Lockheed Aircraft Corporation and this answering intervener; that copies of the said collective bargaining agreements are attached to the Petition on file herein and are incorporated herein by reference thereto.

III.

That all seniority rights of the petitioners were, and are covered by the aforesaid collective bargaining agreements; that had [94] the petitioners been steadily employed by the respondent, Lockheed Aircraft Corporation at all times mentioned in the Petition and continuously between the respective dates of their original employment and the dates of their respective reemployment, the seniority rights of the petitioners and each of them as of the dates of their respective reemployment, would be fixed and determined by the terms and conditions of the aforesaid agreements by reason of the agreements between

Lockheed Aircraft Corporation and this answering intervener and by reason further of the petitioners being at all times members of this answering intervener.

IV.

That upon reemployment after military service of the petitioners by the respondent, Lockheed Aircraft Corporation, the petitioners, and ~~each~~ of them, were restored to the position of seniority and with all of the rights attendant to their said respective positions of seniority as if the said petitioners had been continuously employed by the said corporation and as the said rights were and would have been as of the dates of their respective reemployment without regard for their respective absence while in military service.

Wherefore, this answering intervener prays that petitioners take nothing by their petition and that the relief sought by the petitioners, and each of them, be denied; that judgment be entered in favor of this answering intervener against the petitioners, and each of them, and for such other and further relief as to the Court may seem meet and just in the premises.

HINDIN, WEISS AND G'RARD
By Maurice J. Hindin
Attorneys for Aeronautical Industrial District Lodge 727 [95]

[Verified.]

[Endorsed]: Lodged Dec. 17, 1946. Filed Jan. 6, 1947. Edmund L. Smith, Clerk. [96]

[Title of District Court and Cause.]

STIPULATION

Without waiving any objection as to the materiality of any of the facts herein set forth and reserving to each the right to offer any other evidence desired, the parties to this suit, by and through their respective counsels, do hereby stipulate and agree that the following facts are true and correct and that this stipulation may be treated as sufficient proof of the facts herein contained, to-wit:

1. Respondent, Lockheed Aircraft Corporation, now is, and throughout the period covered by the pleadings herein has been, a corporation organized under and pursuant to the laws of the State of California, with its principal place of business at Burbank, California, and respondent now is, and throughout the period covered by the pleadings herein has been, engaged in the manufacture [97] of airplanes.

2. Intervenor, Aeronautical Industrial District Lodge 727 of the International Association of Machinists, now is, and throughout the period covered by the pleadings herein has been, an unincorporated association, and said intervenor now is, and through the period covered by the pleadings herein has been, the duly certified collective bargaining agency which has negotiated with respondent, Lockheed Aircraft Corporation, the agreements attached to and made a part of the complaint on file herein, which said agreements are marked respectively Exhibit "A" and Exhibit "B".

3. Petitioner James L. Campbell became affiliated with and became a member of the organization of intervenor on or about the 2nd day of November, 1942; and ter-

minated his membership therein on or about the 1st day of March, 1946, but this did not affect his status as an employee of the respondent Company.

4. Petitioner Mitchell B. Joplin became affiliated with and became a member of the organization of intervenor on or about the 18th day of November, 1943, and ever since has been and now is a member and affiliated with said intervenor.

5. Petitioner Malcolm E. Kirk became affiliated with and became a member of the organization of intervenor on or about the 12th day of August, 1943, and ever since has been and now is a member and affiliated with said intervenor.

6. Petitioner James L. Campbell was first employed by Vega Aircraft Corporation (which corporation was thereafter merged with and made a part of Lockheed Aircraft Corporation) on August 17, 1942, and continued in the employ of that corporation until February 26, 1944, at which time he terminated said employment in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. At the time of said termination petitioner Campbell was employed by Lockheed Aircraft Corporation as a Field and Service Mechanic "B" at the rate of pay of $1.20 per hour. Petitioner Campbell entered the armed forces of the United States on April 10, 1944, and continued in such service until October 28, [98] 1945, on which date he was honorably discharged. Thereafter on November 15, 1945, petitioner Campbell applied to the respondent for reemployment in his former position, and on November 27, 1945, was reemployed and restored to his position as

Field and Service Mechanic "A" in the respondent's employ at the hourly rate of $1.30.

7. Petitioner Mitchell B. Joplin was first employed by Lockheed Aircraft Corporation on April 19, 1943, and continued in the employ of that corporation until May 28, 1945, at which time he terminated said employment in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. At the time of said termination, petitioner Joplin was employed by Lockheed Aircraft Corporation as a Field and Service Mechanic "A" at the rate of pay of $1.50 per hour. Petitioner Joplin entered the armed forces of the United States on June 4, 1945, and continued in such service until November 23, 1945, on which date he was honorably discharged. Thereafter on December 5, 1945, petitioner Joplin applied to the respondent for reemployment in his former position, and on December 10, 1945, was reemployed and restored to his position as Field and Service Mechanic "A" in the respondent's employ at the hourly rate of $1.50.

8. Petitioner Malcolm E. Kirk was first employed by Vega Aircraft Corporation (which corporation was thereafter merged with and made a part of Lockheed Aircraft Corporation) on August 5, 1942, and continued in the employ of that corporation until May 31, 1944, at which time he terminated said employment in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. At the time of said termination, petitioner Kirk was employed by Lockheed Aircraft Corporation as a Field and Service Mechanic "B" at the rate of pay of $1.20 per hour. Petitioner

Kirk entered the armed forces of the United States on June 2, 1944, and continued in such service until January 12, 1946, on which date he was honorably discharged. Thereafter on February 8, 1946, petitioner Kirk applied to the respondent for reemployment in his former position, and on March 7, 1946, was reemployed and restored to his position as Field and Service Mechanic "B" in the respondent's employ at the hourly rate [99] of $1.44.

9. At the time of the induction of the petitioner, and each of them, into military service there was in effect between respondent and its employees, represented by intervenor, a collective bargaining agreement, dated September 15, 1941, regulating the wages, hours and working conditions of those employees, including petitioners, and each of them, who were represented by intervenor. Said agreement provided in part as follows:

(a) "This Agreement shall become effective upon its signature and shall remain in force until July 1, 1943, or for the period of the Unlimited National Emergency proclaimed by the President of the United States, whichever is longer, and thereafter until thirty (30) days after either party hereto shall give to the other written notice of desire for change or termination. During such thirty-day period, conferences shall be held by and between the parties hereto with a view to arriving at further agreement. Notices permitted or required to be served under the terms of this Agreement shall be sufficiently served for all purposes herein when mailed postage prepaid, registered mail; return receipt requested, to Robert E. Gross, or his successors, Lockheed Aircraft Corporation, Burbank, California, and/or Courtlandt S. Gross,

or his successor, Vega Aircraft Company, Burbank, California, for service upon the Company, and when similarly mailed to Dale O. Reed, President of the Union, at 147 North Palm Avenue, Burbank, California, or to the successor of him if and when information has been supplied to the Company of the name and address of such successor, and the date of such notice shall be the controlling date for all purposes hereunder." (Article I, Section 3.)

(b) "This Agreement may be amended or added to at any time by the written consent of both parties hereto. However, after one year from date of the signing of this Agreement, either party may, after fifteen (15) days' written notice, open negotiations only on items directly affecting wage rates and other financial benefits [100] for employees. However, if the national emergency shall have extended beyond July 1, 1943, either party may at that time, after fifteen (15) days' written notice, terminate the Agreement or negotiate amendments on any item of the Agreement. This Agreement shall remain in full force and effect during negotiations on amendments." (Article I, Section 4.)

(c) "Six months after an employee is hired his seniority shall be retroactive to the date of his hiring. Rehiring is governed by the sections following." (Article III, Section 1.)

(d) "All employees granted time off or called to duty for United States Government military training, provided such period of training does not exceed sixty (60) days, in any branch of the military

training program, shall receive for a period not to exceed thirty (30) days, the difference between their base military pay and the amount of base pay that would have been earned while working on their regular positions with the Company. This amount will be paid upon return from training and upon receipt of evidence of the amount received while engaged in such training." (Article IV, Section 5(b).)

(e) "In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, training; ability, skill and efficiency, and (b) department record and other factors. If it becomes necessary to reduce the working force in any plant or department, a plan of layoff procedure will be prepared by the management and submitted to the Union for approval. If such plan is not acceptable to the Union the Company agrees to enter negotiations with the Union and to attempt to arrive at a mutually agreeable plan. If, however, at the end of one working week from the date the Company submitted its original plan of layoff procedure to the Union no new plan has been mutually agreed to, the Company may proceed according to its proposed plan of layoff [101] subject to Article II, Section 6.

"To enable the Union to determine that the principle of seniority and the procedure are adhered to, the Company will provide the Union prior to a layoff with a list of all employees it intends to release." (Article III, Section 5.)

(f) "As designated by the Union there shall be in the departments of the plant a department chairman for approximately every 35 to 50 employees and a senior chairman for each department or for every 9 department chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for a Union Chairman to serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company." (Article II, Section 4.)

A copy of said bargaining agreement dated September 15, 1941, is attached hereto, marked Exhibit "A", and is by this reference incorporated herein.

10. On June 4, 1945, and while the petitioners, and each of them, were serving in the armed forces of the United States as aforesaid, respondent and intervenor, on behalf of those employees whom it represented, entered into and executed a collective bargaining agreement. Said agreement of June 4, 1945, provided among other things as follows:

(a) "Seniority shall be the relative status of employees in respect of length of service with the Company, subject to the following qualifications: . . ." (Article IV, Section 1.)

(b) "Employees (other than temporary employees) who shall have left the employment of the Company for the purpose of entering the armed forces of the United States, shall be re-employed by the

Company in accordance with the provisions of the Selective Training and Service Act of 1940, as such Act may be amended." (Article IV, Section 6)

(c) "General Layoff Procedure. Layoffs shall be made in order of [102] Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority, the Company may, in its discretion, retain them in order of their Company-wide seniority, regardless of occupation, where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination in the exercise of such discretion may be taken up as a grievance. Employees who have not acquired seniority rights may be laid off without regard to relative length of service. "The word 'occupation' as used herein, includes all grades and leadmen within an occupation." (Article IV, Section 3(A).)

(d) "As designated by the Union there shall be in the departments of the plant a Group Chairman for approximately every 35 to 50 employees, and a Senior Chairman for each department or for every 9 Group Chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for Group Chairmen to

serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company." (Article II, Section 2.)

(e) "Top Seniority for Union Chairmen for Purpose of Layoffs. For the purpose of applying the Temporary and General Layoff Procedures, Union Chairmen who have acquired seniority shall be deemed to have top seniority as long as they remain Chairmen. If the application of the General Layoff Procedure will result in the retention of more of such Chairmen in a group or department than are provided for in Article II, Section 2 of this Agreement, the Company shall prepare and furnish to the Union a list of all Chairmen in the locations where the surplus exists. The Union shall upon request of the Company promptly designate the Chairmen who are to remain in that capacity, and the Chairmen not to be retained as Chairmen shall [103] be governed by the seniority rules applicable to the layoff of other employees. During a Temporary Layoff and during the period between the first and second steps in an Emergency Reduction of the Working Force, the terms of office of laid-off Union Chairmen shall be deemed to continue." (Article IV, Section 3(D).)

A copy of said agreement dated June 4, 1945, is attached hereto, marked Exhibit "B" and is by this reference incorporated herein.

11. Said collective bargaining agreement of June 4, 1945, is now and at all times since June 4, 1945, has been in full effect and operation.

12. During the latter part of June, 1946, and within one year of the reemployment of petitioners, and each of them, respondent made a general layoff of certain Field and Service Mechanics whose employment was covered by the above-mentioned collective bargaining agreement dated June 4, 1945, and in the course of said general layoff petitioners Campbell and Kirk were laid-off on June 21, 1946, and petitioner Joplin was laid-off on June 24, 1946.

13. At the time the petitioners, and each of them, were laid-off as aforesaid, and throughout the period each of the petitioners was so laid-off, respondent retained in its active employ as a Field and Service Mechanic, F. K. Pierson, a Union Chairman, who was first employed by respondent on, and whose Company seniority with respondent dated from, July 12, 1944, although the ability, skill and efficiency of the petitioners, and each of them, was substantially equal to that of said Union Chairman so retained, and the petitioners, and each of them, were qualified to perform the work in which said Union Chairman was employed at that time.

14. The petitioners, and each of them, thereupon protested against their being laid-off as aforesaid and the retention of said Union Chairman with less seniority in respondent's active employment, and thereafter petitioners

Campbell and Joplin were restored by respondent to active employment on July 15, 1946, and petitioner Kirk was so restored on July 16, 1946.

15. Had the petitioners, and each of them, not been laid-off they would have received from respondent as salary for their services during said period the following sums: James L. Campbell—$168.00; Mitchell B. Joplin—$124.56; [104] and Malcolm E. Kirk—$190.00.

Dated: January 24, 1947.

JAMES M. CARTER
United States Attorney
RONALD WALKER and
JAMES C. R. McCALL, JR.
Assistant United States Attorneys
By James C. R. McCall, Jr.
Attorneys for Petitioner

ROGER B. SMITH
ROBERT H. CANAN and
MARK E. TRUE
By Mark E. True
Attorneys for Respondent

HINDIN, WEISS AND GIRARD
By Maurice J. Hindin
Attorneys for Intervenor

[Endorsed]: Filed Jan. 24, 1947. Edmund L. Smith, Clerk. [105]

[Title of District Court and Cause]

MOTION OF INTERVENOR FOR REHEARING, OR FOR NEW TRIAL

Comes now, Aeronautical Industrial District Lodge 727, intervenor in the above captioned matter, and respectfully moves the Court for a rehearing, or for a new trial upon the following grounds:

1—That the ordered and proposed Judgment is contrary to the law.

2—That the proposed conclusions of law are erroneous and constitute errors of law.

3—That since date of the Order for Judgment, questions of law directly and materially affecting the substantial rights of parties have been decided by the Circuit Court of Appeals, and that the said decisions of the Circuit Court of Appeals materially affect the matters contained in this action. [138]

Intervenor's Motion is made and based upon Memorandum of Points and Authorities attached hereto, upon this Motion, and upon all the records and files of the above captioned action.

Wherefore, intervenor prays that a rehearing may be granted, or in lieu thereof, that a new trial may be granted herein and for such other and further Orders as to the Court may be meet and just in the premises.

Dated: June 25, 1947.

HINDIN, WEISS AND GIRARD

By Maurice J. Hindin

Attorneys for Intervenor. [139]

MEMORANDUM OF POINTS AND AUTHORITIES.

I.

Rights of a veteran to reemployment and to seniority rights are subject to the terms and provisions of collective bargaining agreements in effect at the time the reemployment of a veteran is sought, not at the time of his induction into the service, provided that such contract does not discriminate against veterans as such. A veteran's rights to seniority and reemployment under Selective Service Act are subject to changes in seniority provisions in collective bargaining agreements during the time he is in service. A change in seniority provisions which provides for top seniority for certain Union officers is a reasonable provision and does not discriminate against veterans. Under such circumstances, a veteran is not entitled to seniority rights above such Union officers notwithstanding that he is credited with longer period of employment, and notwithstanding that these top seniority provisions were not in effect at the time of his induction.

Gauweiler vs. Elastic Stop Nut Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9253, decided May 20, 1947) (12 L. C. #63,783.

Koury vs. Elastic Stop Nut Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9272, decided May 20, 1947) 12 L. C. #63,784.

DiMaggio vs. Elastic Stop Nut Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9271, decided May 20, 1947) 12 L. C. #63,785.

Payne vs. Wright Aeronautical Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9216, 9217, 9227, decided May 20, 1947) 12 L. C. #63,786.

II.

A new trial may be granted in actions tried without a jury for any of the reasons for which rehearings have heretofore been [140] granted in suits in equity in Courts of the United States.

Federal Rules of Civil Procedure, Rule 59 (a).

III.

The Court has power to order a rehearing under Rule 59 (a) 2.

Seymour vs. Potts and Callahan, 2 F. R. D. 38.

Respectfully submitted,

HINDIN, WEISS AND GIRARD

By Maurice J. Hindin

Attorneys for Intervenor [141]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 25, 1947. Edmund L. Smith, Clerk. [142]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

The above-entitled case was submitted to the Court after argument of counsel, on an agreed stipulation of facts by the parties, dated January 24, 1947, and the Court adopts such stipulation and an additional stipulation entered into in open court July 15, 1947, as its findings of fact herein.

CONCLUSIONS OF LAW

1. The petitioners are reemployed veterans of the armed forces of the United States, and are entitled to the benefits of Section 8 of the Selective Training and Service Act of 1940, as amended (50 U. S. C. A. App. Sec. 308) and Section 7 of the Service Extension Act of 1941, as amended (50 U. S. C. A. App. Sec. 357). [143].

2. During petitioners' absence in the armed forces, and prior to their restoration in their former positions in the respondent's employ, the collective bargaining agreement between the respondent and the intervening union, regulating working conditions in those positions, was changed in such manner as to accord to union chairmen, employed in similar positions, "top seniority" over all other like employees, in the event of lay-offs due to curtailment of work. Prior to this change, and at the time when the petitioners left their positions to enter the armed forces, the collective bargaining agreement provided for lay-offs on the basis of straight seniority, alone. This change in the seniority system at the plant tended to alter ad-

versely, the seniority status of reemployed veterans, and thereby to diminish the reemployment benefits which Congress secured to them by law; and the attempted change was, as to reemployed veterans, void and of no effect during their statutory year of reemployment.

3. Within one year after his restoration to his former position as flight and service mechanic, each of the petitioners was laid off, due to curtailment of work, while a union chairman with less seniority than any of the petitioners, was continued in active employment by the respondent in their job classification, under the "top seniority" provision of the intervenor's contract above mentioned; and by reason of such action, the petitioners suffered losses of wages as follows: James L. Campbell, $168.00; Mitchell B. Joplin, $124.56; and Malcolm E. Kirk, $190.00. The petitioners are entitled to be compensated by the respondent for such loss of wages.

4. A judgment requiring the payment of such compensation and the costs of the case will be entered herein against respondent.

Dated: ~~May~~ July 17, 1947.

C. E. BEAUMONT
United States District Judge

Approved as to form as required by Rule 7(a).

Dated: May 12th, 1947.

MARK E. TRUE
Attorney for Respondent

MAURICE J. HINDIN
Attorney for Intervenor

[Endorsed]: Filed Jul. 17, 1947. Edmund L. Smith, Clerk. [144]

In the District Court of the United States in and for the Southern District of California
Central Division

No. 6028-B Civil

JAMES L. CAMPBELL, MITCHELL B. JOPLIN and MALCOLM E. KIRK,

Petitioners,

vs.

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondent,

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Intervenor.

JUDGMENT

This case was tried and submitted by the parties upon the entire record in the case, including a stipulation of facts dated January 24, 1947, and the Court having considered the same, and orally stated its opinion on the issues, and made and entered its Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed by the Court, as follows:

(1) That respondent Lockheed Aircraft Corporation pay to the petitioners the amount of their respective losses of wages, as follows: James L. Campbell, $168.00; Mitchell B. Joplin, $124.56; and Malcolm E. Kirk, $190.00; and pay the court costs incurred by the United States herein. [145]

(2) That provisions of the collective bargaining agreement executed between respondent corporation and intervenor union, dated June 4, 1945, and more particularly seniority provisions with reference to union chairmen, is inapplicable and not binding upon the petitioners.

(3) That execution may issue for the sums decreed to be paid.

Dated: this 17th day of ~~May~~ July, 1947.

C. E. BEAUMONT
United States District Judge

Approved as to form as required by Rule 7(a)
Dated: May ....., 1947.

.....
MARK E. TRUE
Attorney for Respondent

.....
JAMES C. R. McCALL, JR.
Attorney for Petitioners

Judgment entered July 17, 1947. Docketed July 18, 1947. Book 44, page 280. Edmund L. Smith, Clerk; by Francis E. Cross, Deputy.

[Endorsed]: Filed Jul. 17, 1947. Edmund L. Smith, Clerk. [146]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice is hereby given that Aeronautical Industrial District Lodge 727, an unincorporated association, Intervenor in the above captioned action hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Final Judgment entered in the above captioned action on the 17th day of July, 1947, (Civil Order Book No. 44, page 280).

Dated: this 9th day of Sept., 1947.

HINDIN, WEISS AND GIRARD
By Maurice J. Hindin
Attorneys for Appellants, Aeronautical Industrial District Lodge, 727,
111 West 7th St., Los Angeles 14, Cal. [147]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 9, 1947. Edmund L. Smith, Clerk. [148]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 153, inclusive, contain full, true and correct copies of Petition for Enforcement of Veterans' Reemployment Rights; Answer of Respondent Lockheed Aircraft Corporation; Answer of Aeronautical Industrial District Lodge 727; Stipulation; Petitioners' Trial Memorandum; Intervener's Trial Memorandum; Trial Memorandum of Respondent Lockheed Aircraft Corporation; Motion of Intervenor for Rehearing or for New Trial; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Bond on Appeal and Designation of Record on Appeal which, together with copy of Reporter's Transcript of proceedings on April 25, 1947 and July 15, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $27.40 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 2 day of October, A. D. 1947.

(Seal) EDMUND L. SMITH
Clerk

By Theodore Hocke
Chief Deputy Clerk

[Title of District Court and Cause]

Honorable Campbell E. Beaumont, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Friday, April 25, 1947

Appearances:

For the Petitioners: James M. Carter, United States Attorney; by Ronald Walker, Assistant United States Attorney, Chief of Civil Division; and James C. R. McCall, Jr., Assistant United States Attorney.

For the Respondent: Roger B. Smith, Robert H. Cahan, Mark E. True, Legal Department, Lockheed Aircraft Corporation, Burbank, California.

For the Intervener Aeronautical Industrial District Lodge No. 727: Hindin, Weiss and Girard, 111 West 7th Street Building, Los Angeles, California.

Los Angeles, California, Friday, April 25, 1947.
1:30 p. m.

The Court: The court asked you gentlemen to come in here on the case of Campbell v. Lockheed.

Did you get the names of those appearing, Mr. Clifton?

The Clerk: Yes, I did, your Honor.

The Court: The last time you were here we were all in agreement, I believe, that it would be advisable for the court to await the decision in the Trailmobile case.

This has now come down. It appears to the court from the statements made by the Supreme Court in its opinion—perhaps the statements were there in the decision of the

Court of Appeals but not so clearly set forth as in the Supreme Court's decision—that the action complained of was beyond the statutory period of one year. That is the period with which the decision is chiefly concerned.

I suppose all of you agree with the court that it is clear in the Trailmobile case that the acts were after the one-year period; is that correct?

Mr. Hindin: In the instant case, your Honor?

The Court: In the Trailmobile case.

Mr. Hindin: Yes, your Honor.

Mr. True. In the Trailmobile case.

Mr. McCall: Yes, that is true.

Mr. Hindin: Yes. [3*]

The Court: So for that reason I say factually it does not have the compelling force in this case that we probably thought it did when we were here before.

Now, I had prepared for reading a short statement when this matter came up last time we were in court; and if I had decided it then, my decision would have been based on that memorandum.

I have not changed my mind at all since that time, and I shall just read the statement that I had prepared.

In the case at bar an agreement was entered into by intervener and respondent, while petitioners were absent in the military service. As the result of this agreement petitioners were "laid off," while a union chairman was retained. The chairman had less seniority than petitioners and was kept at work solely by virtue of this agreement.

*Page number appearing at top of page of original Reporter's Transcript.

Intervener relies largely on the case of Fishgold v. Sullivan, 328 U. S. 275. I do not view such case as binding herein because of factual difference (1). Also it must be borne in mind that the court in that case said that no agreements "between employers and union can cut down the service adjustment benefits" secured to veterans under the act. Certainly seniority is one of such benefits, and this bene- [4] fit was "cut down" by the agreement between employer and union.

In reaching the conclusion that the petitioners are entitled to prevail here, it does not mean that the court is "granting the veteran an increase in seniority over what he would have had if he had never entered the armed services" or that he has received a "step-up or gain in priority" within the inhibition of the Fishgold case. He is not being given something new by way of advancement; he is merely restored to the seniority position he had when he left for military service, plus the time accumulation for his military absence to which he is, in any event, clearly entitled. In other words, he merely steps back upon the same step of the senority escalator on which he was standing when he stepped off to enter the military service. The union chairman either was on a lower step or took his position on the escalator while the veteran was absent. No agreement between employer and union made in the veteran's

(1) In the Fishgold case the men preferred over the veteran had a higher shop seniority than the veteran.

absence could give the chairman a place above him in seniority.

I think I might add that after reading the Trailmobile case I believe there is a part here which well could be read as having the same construction as was placed by myself upon that point.

This is on page 18 of the advance sheet of the opinion and it refers to the Fishgold case. This is the statement: [5]

> "For the statutory year indeed this meant that the restored rights could not be altered adversely by the usual processes of collective bargaining or of the employer's administration of general business policy. . . ."

In other words, that principle involved there is the very basis upon which I felt that this case should be decided. Therefore, judgment is ordered for the petitioners.

[Endorsed]: Filed 6/2/47. Edmund L. Smith, Clerk. [6]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Fresno, California, Tuesday, July 15, 1947.

Appearances:

For the Petitioners: James M. Carter, United States Attorney, by James C. R. McCall, Jr., Assistant United States Attorney.

For the Respondent: Mark E. True, Esq., Legal Department, Lockheed Aircraft Corporation, Burbank, California.

For the Intervenor: Hindin, Weiss and Girard, by Maurice Hindin, Esq., 111 West 7th Street Building, Los Angeles, California.

Fresno, California, Tuesday, July 15, 1947.
10:00 a. m.

The Court: I have considered this very carefully and I have not changed my mind about the proper decision in this case. I feel that a liberal construction of the Act under the evidence justifies the position assumed by petitioners and the view expressed by the court in its statement April 25, 1947.

That part of the intervenor's argument which has to do with the practical side of the question I think is answered by the dissenting judge in the Payne case where he said:

> "Nor do we feel that the employers are faced with an impossible task in the adoption of a formula which would not only be workable but thoroughly consonant with the views herein expressed."

And that is borne out by our situation in this case, as stated by Mr. True, attorney for Lockheed.

I would not decide this case at the present time, but would wait for a final decision by the Supreme Court in the Gauweiler case, if it were not for the position of Lockheed. I do not believe it makes any difference how this court decides it because these four New Jersey cases will probably be before the Supreme Court. I am assuming that a writ of certiorari will be requested. I do not believe it really [2] serves the purpose of your company greatly, Mr. True to have a decision now. But you think it does, and you have a right to a decision; so the court is deciding it. Probably there will be a decision by the Supreme Court in the Gauweiler case before the ruling herein can be put into effect, for no doubt there will be an appeal from this court's judgment.

As I said in my opinion before, it seems to the court that the veteran merely steps back upon the same step of the senority escalator on which he was standing when he stepped off to enter the military service.

I believe that is consistent with the holding in the Fishgold case and also with the statement in the Trailmobile case where it said:

> "For the statutory year indeed this meant that the restored rights could not be altered adversely by the usual processes of collective bargaining or of the employer's administration of general business policy * * *."

So judgment is ordered for the petitioners.

There was some question as to the findings.

I do not have the forms here with me that were presented.

Mr. McCall: There was no discussion as to the findings, your Honor. It was in the form of judgment. Mr. Hindin thought that he would prefer to have added to the judgment one paragraph.

Mr. Hindin: I have it here. The judgment as prepared [3] by Mr. McCall simply read, "That respondent Lockheed Aircraft Corporation pay to petitioners the amount of their respective losses of wages as follows:" and then it gives the amounts, "and pay court costs incurred by the United States herein."

In order that the main issue, that is, the respective seniority rights, be properly presented in the record, I suggested a second paragraph to the judgment, which reads:

> "That the provisions of the collective bargaining agreement executed between respondent corporation and intervenor union dated June 4, 1945, and more particularly the seniority provision with reference to union chairman, is inapplicable and not binding upon the petitioners."

In other words, I should not like the record to go up where there may be a question that the only thing decided by the court was whether the petitioners were entitled to the matter of the monetary damages. I think that the real gravamen of the cause of action is whether or not the agreement of June 4th is binding upon the petitioners, and by the inclusion of that one sentence in the judgment the record would thus properly show it.

Mr. McCall: I had no objection to the inclusion of that in the judgment particularly, your Honor, except as I told Mr. Hindin at the time—

The Court: I didn't hear you. [4]

Mr. McCall: I had no objection to the inclusion of that in the judgment because that is what the court did judge or hold, but the same matter had been included in the conclusions of law, which were prepared by me and which the court was to sign, and as I stated to Mr. Hindin my impression of the judgment was simply the final ordering part of what the court did and not the—

The Court: I think strictly speaking you are correct in your view of the office of the judgment.

Mr. McCall: So I told him I didn't care to have it in there, but if your Honor wanted to put it in it was all right with me. I said the repetition of it in the judgment after it has been stated in the conclusions would merely tend to indicate the court might be a little bit proud of its opinion, and I didn't know whether your Honor wanted to include it in that way or not.

The Court: Let's get Mr. True's view of it. What do you think about its inclusion in the judgment?

Mr. True: If it appears in the conclusions of law, I would be inclined to feel that it would then be properly before an appellate court in the event an appeal is taken. And, secondly, when a judgment in money is rendered against this corporation it can only be rendered under these facts upon the theory that the union chairmen provision does not apply to petitioners. [5]

The Court: Do you think it is properly included in the conclusions?

Mr. True: Yes, I feel it is.

The Court: I do not think it makes any difference one way or the other. If it is in the conclusions I think it will serve all purposes that Mr. Hindin would have in mind. There is no question that we like to have our findings, conclusions, and judgment artistically drawn, but it is not so important one way or the other. So I think it may be included.

I don't have the forms of judgment that you presented with me. Or if they are here, I don't know where to find them because my secretary is away. I am going to San Francisco, I have to be there next week, and then I am going back to Los Angeles. I can possibly have them sent up to me before I leave here this week and sign them.

I think the fact stated by Mr. True should be made a part of the record. This case was tried on a statement of facts and unless it is agreed that that be made a part of the record I am afraid that it will not be considered by an appellate court. When we have an agreed statement of facts it is not necessary to have findings. But if you gentlemen would agree that the statement made by Mr. True is correct, and that it be made a part of the statement of facts, or be considered as a part, that will be all that will be necessary.

Mr. Hindin: Specifically, now, what portion of the [6] statement is it that you have asked us to stipulate to? That in the operation of the business of Lockheed they have tried it under several ways?

Mr. True: That in the operation of the business of Lockheed, the defendant corporation has operated, first, under the policy of complying with the contract granting union chairmen top seniority and applying that provision to veterans returning from the service; that, secondly,

Lockheed has operated under the policy of employing and retaining in their employment veterans and not considering that the provision of the contract giving union chairmen top seniority is binding upon those veterans; and that the application of either policy has not proved inconvenient to the company.

The Court: That is the statement that I think should go in as part of the record in view of the opinions in these Third Circuit cases.

Do you have any objection to its going in, Mr. Hindin?

Mr. Hindin: No, I have no objection, but I believe a further statement should go in, in order to present the full picture, and that is that the corporation has not attempted to operate with reference to reinstatement of veterans inducted before the new contract and after the new contract simultaneously and at the same time.

The Court: I do not know whether they have. What is the fact in that case, Mr. True? [7]

Mr. True: The facts in that case are these: During the time we were applying this provision to the veterans we found that almost without exception every veteran who left our employment to go into the armed forces had gone in prior to June 4, 1945, and accordingly we did not draw the distinction which Mr. Hindin makes.

The Court: I think it is proper to have that in, in view of Mr. Hindin's request. I really am of the opinion that it is not a part of this case because of the factual situation, but in view of Mr. Hindin's request I think that also should be made a part of the record.

Are you willing to stipulate that it may be?

Mr. True: I will so stipulate.

The Court: And Mr. McCall?

Mr. McCall: Yes, I will so stipulate.

Mr. Hindin: I will so stipulate.

Mr. McCall: Could it be possible without having that stipulation formally drawn up and signed by us, let it be ordered by the court and the reporter prepare that part of the transcript dealing with the statement made by Mr. True down to the present moment and that that be filed as a part of the stipulation?

Mr. True: Yes.

Mr. Hindin: Yes, that is satisfactory.

The Court: That is satisfactory. [8]

Mr. Hindin: In order that there be no misunderstandings, while I want to stipulate to the facts as presented by Mr. True in his stipulation, I don't want it to be understood that I concede as to the facility of operation or the applicability of that particular matter with reference to the case at issue.

The Court: You are only stipulating to the fact and not that it has any legal bearing. That will be a matter to be determined later.

Very well. I think that concludes our hearing this morning. Court is now recessed.

[Endorsed]: Filed Sep. 9, 1947. Edmund L. Smith, Clerk. [9]

[Endorsed]: No. 11750. United States Circuit Court of Appeals for the Ninth Circuit. Aeronautical Industrial District Lodge 727, an unincorporated association, Appellant, vs. James L. Campbell, Mitchell B. Joplin, Malcolm E. Kirk and Lockheed Aircraft Corporation, a corporation, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed October 3, 1947.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,750

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Appellant and Intervenor Below,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN and MALCOLM E. KIRK,

Appellees and Petitioners Below,

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Appellee and Respondent Below.

DESIGNATION OF RECORD AND STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY.

To the Clerk of the U. S. Circuit Court of Appeals and to James L. Campbell, Mitchell B. Joplin and Malcolm E. Kirk, Petitioners and Appellees, and to Messrs. James M. Carter, Ronald Walker and James C. R. McCall, Jr., Attorneys for Petitioners and Appellees, and to Lockheed Aircraft Corporation, Respondent and Appellee, and to Messrs. Robert B. Smith, Robert H. Canan and Mark E. True, Attorneys for Respondent and Appellee:

You and Each of You Will Please Take Notice that Appellant and Intervenor, Aeronautical Industrial Dis-

trict Lodge 727, hereby designates the contents of record on appeal as follows:

* * * * * * * * *

Please take further notice that the points upon which Appellant and Intervenor intends to rely are as follows:

1—That upon the stipulated facts in the above captioned action, the Court erred as a matter of law in the rendition of its judgment against Intervenor and Appellant herein.

2—That the Judgment of the Court is against the law.

Dated: November 10, 1947.

HINDIN, WEISS AND GIRARD
By Maurice J. Hindin
Attorneys for Appellant and Intervenor.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 12, 1947. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, May 11, 1948.

Before: Mathews, Healy and Orr,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Maurice J. Hindin, counsel for appellant, and by Mr. J. C. R. McCall, Assistant United States Attorney, counsel for appellees, Campbell, et al., and by Mr. Mark E. True, counsel for appellee, Lockheed Aircraft, and submitted to the court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, July 26, 1948.

Before: Mathews, Healy and Orr,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith

filed by the clerk, and that a decree be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

July 26, 1948

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before: Mathews, Healy, and Orr,
Circuit Judges.
Healy, Circuit Judge.

OPINION

The individual appellees are re-employed veterans of the armed forces of the United States entitled to the benefits of § 8 of the Selective Training and Service Act of 1940, as amended, 50 App. USCA § 308.[1] At the time of their induction into

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[1] So far as pertinent this statute provides:

"(b) In the case of any such person who, in order to perform such training and service, has left . . . (B) if such position was in the employ of a private employer, such employer shall restore such person, to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so; . . .

(c) Any person who is restored to a position in accordance with the provisions of paragraph . . .

the army they were employees of appellee Lockheed Aircraft Corporation and were members of appellant Aeronautical Union. At that time a collective bargaining agreement was in effect between appellant and Lockheed, governing the conditions of employment and establishing a system of seniority rights for the employees. At all relevant times appellant was the certified collective bargaining agent for Lockheed's employees.

While appellees were in military service, and prior to their restoration to their former positions with Lockheed, the collective bargaining agreement between Lockheed and appellant was changed in such manner as to accord to union chairmen, employed in similar positions, top seniority over all other like employees in the event of lay-offs due to curtailment of work. Prior to this change, and at the time appellees entered the armed forces, the bargaining agreement provided for lay-offs on the basis of straight seniority alone. Within the one year after the restoration of appellees to their former positions each was laid off, due to curtail-

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(B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

ment of work, while union chairmen with less seniority than any of them were continued in active employment in their job classifications under the top seniority provisions of the bargaining contract mentioned.

The trial court was of opinion that the change in the seniority system at the plant tended to alter adversely the seniority status of re-employed veterans, and thereby to diminish the re-employment benefits which Congress had secured to them by law, hence the attempted change was, as to re-employed veterans, void and of no effect during their statutory year of re-employment. Judgment was awarded each of appellees in the amount of his loss of wages suffered by reason of his lay-off.

Appellant relies for reversal on a series of opinions by the Third Circuit, namely, Ganweiler vs. Elastic Stop Nut Corp., 162 F. 2d 448; Koury vs. Elastic Stop Nut Corp., 162 F. 2d 544; Di Maggio vs. Elastic Stop Nut Corp., 162 F. 2d 546; and Payne vs. Wright Aeronautical Corp., 162 F. 2d 549, each of which involved identical or very similar factual situations and questions of law. The court arrived at a conclusion contrary to that reached below. In the first three of these cases Judge McLaughlin dissented, and in the fourth Follmer, District Judge, did likewise.

The Supreme Court has not yet ruled directly on the point, although its opinions in Fishgold vs. Sullivan Drydock & Repair Corp., 328 U. S. 275, and Trailmobile Co. vs. Whirls, 331 U. S. 40, are of important aid in the consideration of the problem

and, we think, lend support to the decision below. Later helpful cases bearing on the question, and called to our attention since the oral argument, are Spearmon vs. Thompson, 8 Cir., 167 F. 2d 626; Rudisill vs. Chesapeake & O. Ry. Co., 4 Cir., 167 F. 2d 175; and Dwyer vs. Crosby Co., 2 Cir., 167 F. 2d 567.

It would serve no useful purpose to add to the already extensive war of words on the subject. Enough to say that we disagree with the view expressed by the majority in the Gauweiler and other Third Circuit opinions cited above, and are in agreement with the dissenting opinions. The judgment is accordingly affirmed.

[Endorsed]: Opinion. Filed July 26, 1948. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 11750

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727,

Appellant,

vs.

JAMES L. CAMPBELL, et al.,

Appellees.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court that the judgment of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellees and against the appellant.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellees recover against the appellant for their costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered July 26, 1948. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and thirty-six (136) pages, numbered from and including 1 to and including 136, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United State Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2nd day of September, 1918.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9930)